

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

11-CR-449 (SJ)

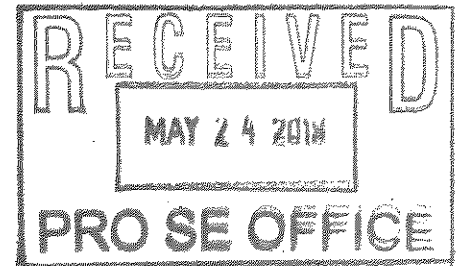
v.

MOTION

Cassandra Cean

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PRELIMINARY STATEMENT



Defendant Cassandra Cean ("Defendant"), pro se, respectfully submits this instant motion for a full resentencing for imposition of restitution, resentencing based on relevant conduct of co-conspirators pursuant to 1B1.3(a)(1)(B), loss pursuant to 2B1.1(b)(1), and forfeiture pursuant to 18 USC 984(a).

This motion is not intended as a motion pursuant to 28 U.S.C. Section 2255. The Supreme Court and the Court of Appeals for the Second Circuit have imposed some constraints upon the district court's ability to convert a pleading to a motion pursuant to 28 U.S.C. Section 2255 because of the potentially detrimental consequences to the petitioner. In construing a pro se pleading as a request for relief under 28 U.S.C. Section 2255 ("2255"), a district court is required to: Notify the pro se litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent 2255 motion will be subject to the

restrictions on "second or successive" motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the 2255 claims he believes he has. Castro, 540 U.S. at 383; see also Adams, 155 F.3d at 584. Additionally, a district court judge can revisit issues decided on appeal [either by motion or sua sponte] where there are subsequent factual discoveries. EEOC v. Sears, Roebuck & Co. 417 F.3d 789, 796 (7th Cir.2005).

THIS COURT'S RECENT RULING

On January 11, 2018, the Court affirmed Judge Reyes' reasoning in his Report and Recommendation, recommending restitution in the amount of \$243,148.51 to Impac Secured Asset Series 2007-2 Trust ("Impac") as a victim and no restitution to Santander as a victim. This recent ruling, the evidence presented post-remand during the MVRA hearings, and the recent disclosure of the sealed lawsuit filed in United States v. Impac Secured Assets Corp., Impac Funding Corp., and Impac Mortgage Holdings, Inc. invites scrutiny and re-application of not only the Mandatory Victim Restitution Act of 1996 ("MVRA") which is codified in Title 18, United States Code, Sections 3663A and 3664(e); but also for relevant conduct of co-conspirators; and specific offense characteristics sentence enhancements which are respectively codified in United States Sentencing Manual, Sections 1B1.3(a)(1)(B); and Section 2B1.1(b).

ARGUMENT

POINT I

NEW EVIDENCE POST-REMAND MANDATES

A FULL RESENTENCING OF DEFENDANT

A. The Defendant Should Be Resentenced Pursuant To

1B1.3(a)(1)(B)

Defendant's conduct and the conduct of her co-conspirators did not fall within the scope of conduct allowable under 1B1.3(a)(1)(B), and Defendant asserts that any enhancement of her sentence based on 1B1.3(a)(1)(B) was a procedural error. A district court may sentence a defendant based on the reasonably foreseeable acts and omissions of his co-conspirators that were taken in relation to a conspiracy. U.S. Sentencing Guidelines Manual section 1B1.3(a)(1)(B). *United States v. Getto*, 729 F.3d 221 (2d Cir. 2013). However, the scope of conduct for which a defendant can be held accountable under the sentencing guidelines is significantly narrower than the conduct embraced by the law of conspiracy. *Id.* Defendant asserts that her sentence was inappropriately enhanced by conduct of her co-conspirators, despite the guidance offered in *United States v. Studley*, 47 F.3d at 574 (2d Cir. 1995).

Under *Studley*, the court is directed to determine the defendant's accountability for the conduct of others under

subsection (a)(1)(B) using a two prong test. First, the court must determine the scope of the criminal activity the particular defendant agreed to jointly undertake (i.e. the scope of the specific conduct and objectives embraced by the defendant's agreement). This determination, goes to prong one of the test, must be made before the issue of the second (foreseeability) prong is reached. See Studley, 47 F.3d at 575. In the PSR there was no mention or determination of the specific conduct undertaken by Defendant or the objectives embraced. The PSR explained that, "Cean was involved in every transaction which comprises the instant offense, with the exception of the two 641 East 82nd Street transactions. She is nevertheless accountable for the losses associated with these two properties, they were both part of the overall conspiracy of which she was found guilty. Further, the activity which comprises the instant offense was jointly undertaken by Cean and the losses associated with each property were reasonably foreseeable. Consequently, on [count] 1,2,3,5, & 6, Cean is accountable for the total loss."

Contrary to the determination of the PSR, the testimony of Mr. Nicholas Schwegel, the Government's witness at the MVRA hearing, concerning 641 East 87th Street, Bklyn, NY, support that any sentence enhancement to the Defendant's sentence concerning this property was impermissible. Specifically, Mr. Schwegel testified that Defendant's name did not appear on any of the documents relating to the mortgage and that she was not the settlement agent with respect to this mortgage. (HT: 99-100).

Next, Mr. Jeremy Calva, Defendant's expert witness, testified that he saw no documents mentioning Defendant or Defendant's firm and that it was his opinion that since there was no proof of specific conduct or objectives embraced by the Defendant's agreement, Defendant could not be at fault. (HT: 261). In response to the Government's further inquiry of the expert witness on this matter, Magistrate Judge Reyes advised, "You don't need to go into this. This is a legal matter that I'll deal with." However, this legal matter has not yet been addressed through the Magistrate's Report and Recommendation (R&R) or the Court's adoption of the R&R. Moreover, during Defendant's sentencing and in the Government's sentencing memorandum, the Government incorrectly applied the wrong law for co-conspirator liability, by quoting case law in *United States v. Peter Rosa*, 17 F. 3d 1531 (2d Cir. 1993) and *United States v. Juan Manuel Huezco*, 546 F.3d 174 (2d Cir. 2008), whose case law is limited to the elements necessary to prove conspiracy, not elements needed "to prove a defendant's liability as a co-conspirator. See Government's Sentencing Memorandum, ECF DE 198 p.6).

At sentencing, the Government inappropriately argued for sentence enhancements based on relevant conduct of co-conspirators, pursuant to 1B1.3(a)(1)(B), by invoking irrelevant conspiracy law stating that, "the case law on this issue states that a participant in a conspiracy need not know every act that other participants in the conspiracy are committing during the course of the conspiracy." See ECF DE

193-5 p. 9. In providing credence to the misapplied conspiracy case law, the Government futilely stated, "[W]ith regard to that, the government presented evidence at trial that multiple closing agents were used during the course of the conspiracy, that Cassandra Cean had involvement with other closing agents.... So, the mere fact that she wasn't the closing agent doesn't take away her accountability for the actions of her other co-conspirators." Studley, the controlling case regarding relevant conduct of co-conspirators does not support the Government's proposition. *United States v. Khandrius*, 613 Fed. Appx. 4 (2d Cir. 2015) (quoting) *United States v. Studley*, 47 F.3d 569, 574 (2d Cir.1995) (even important participation in one aspect of a conspiracy with awareness of others does not necessarily establish responsibility for the whole of the conspiracy's activities). Moreover, the Second Circuit vacated the sentence of defendant-appellant Khandrius and remanded the case for resentencing consistent with its ruling that, "[T]he district court erred in attributing the entire loss amount from fraudulent Medicare billing to defendant under U.S. Sentencing Guidelines Manual Section 1B1.3(a)(1)(B) where it gave undue weight to his posing as a doctor, awareness that a suspiciously high volume of patients passed through the clinic, and status as a paid clinic employee in finding that the entire scope of the scheme orchestrated by his employers fell within his agreement to the conspiracy." *Id.*

B. The Defendant Should Be Resentenced Pursuant to

2B1.1(b)(1)

It should be noted that, even if the Court were to determine that the Defendant was responsible for loss associated with 641 East 87th Street, Brooklyn, NY under co-conspirator liability, defendant still should be resentenced based on the amount loss calculated regarding 641 East 87th Street, because demonstrably post-remand the tax assessment value of all the collateral used as "credit against loss" was materially incorrect.

Under the Guidelines, the "General Rule" is that "loss is the greater of actual loss or intended loss," U.S.S.G. Section 2B1.1 cmt.n.3(A). The loss amount shall be reduced by certain "credits against loss," defined, "in a case involving collateral pledged or otherwise provided by the defendant," as "the amount the victim has recovered at the time of sentencing from disposition of the collateral, or if the collateral has not been disposed of at that time, the fair market value of the collateral at the time of sentencing." U.S.S.G. Section 2B1.1 cmt.n.3(E)(ii). United States v. Raz Nawaz, 555 Fed.Appx.19(2d 2014). The definition of "fair market value" under U.S.S.G. Section 2B1.1 Application 3(E) Credits Against Loss provides that:

in the case of a fraud involving a mortgage loan, if the collateral has not been disposed of by the time of sentencing, use the fair market value of the collateral as of the date on which the guilt of the defendant has been established, ... by ... trial... . In such a

case, there shall be a rebuttable presumption that the most recent tax assessment value of the collateral is a reasonable estimate of the fair market value.

At sentencing, Defendant's counsel argued the tax assessment value of the subject collateral was not a reasonable estimate, "the probation report does not properly calculate the loss amounts ...a tax assessment may not be up to date, it may not be accurate, it may be much lower than the actual fair market value of the property and by using a tax assessment, my client is prejudiced." Indeed, the testimony at the MVRA hearings clearly demonstrated that the PSR incorrectly relied upon the tax assessment and use of the tax assessment value of collateral prejudiced the Defendant.

1. 55 Stillwell Place, Brooklyn, NY

Specifically, Mr. Musick testified, on November 16, 2015, "[M]y understanding is that there was a BPO done and I think it was in the past two or three months," and that it fairly and accurately reflect the broker's price opinion of \$380,000. (HT: 128), See also ECF DE 236 p. 2. Therefore, on May 9, 2014, the tax assessment used at Defendant's sentencing, per the PSR, valuing the property at 55 Stillwell Place for \$241,000, represents a difference in the amount of \$139,000. Importantly, the tax assessment value for 55 Stillwell Place shows that the tax assessment remained the same for three years, during the tax period of 2013/2014 -

2015/2016 reporting the value of the property at \$241,000, (See Cean PSR, See also Exhibit A - Property Shark Printout for 55 Stillwell, Bklyn, NY) starkly paling in comparisons to the Broker's Price Opinion of \$380,000 reported during the MVRA testimony. (ECF DE 262 p. 128) (HT: 127). Additionally, the Government's witness testified that he did not know why there was such a difference between the original valuation of the property from when the loan originated and the most current broker's price opinion. (ECF DE 262 p. 128) (HT: 127).

2. 641 East 87th Street, Brooklyn, NY

Further, at the MVRA hearing, Mr. Schwegel testified that the Broker's Price Opinion ("BPO") valued the property located at 641 East 87th Street, Brooklyn, NY at \$583,000 (HT: 96). The tax assessment used at Defendant's sentencing, per the PSR, valued the property at \$463,000, (See Cean PSR; See also Exhibit B - Property Shark Printout for 641 East 87th Street, Bklyn, NY) representing a difference of \$120,000. Therefore, this Court's January 11, 2018 ruling and Defendant's May 9, 2014 sentencing, shockingly demonstrates the depth of the prejudice of Defendant's calculated restitution amount and intended loss amount being predicated on two different amounts for fair market values (or credit against loss) for the same property. Although, the Government is correct in its general assertion that "Given the varied scope of loss and restitution determinations, then, a disparity between them does not, in and of itself, constitute proof of sentencing error" (GOM at 16), here we have not only

a varied scope of loss, we have inter alia, a varied scope of the fair market value (and calculation of loss) used for the same property to determine restitution and intended loss.

The total of the difference of the fair market values used for calculating restitution and intended loss for the above-referenced properties represents only two of the four properties resulting in the total restitution and intended loss amount. Yet, the difference in these two property values, alone, represent a combined difference of \$259,000 [\$139,000 (Stillwell Place) + \$120,000 (641 East 87th Street)], easily crediting Defendant's contention of procedural errors in the calculation of both restitution and the intended loss pursuant to the MVRA and 2B1.1 Application Note 3(E)(ii), since the difference of \$259,000 would have placed Defendant in a lower guideline range of 63-78 months (14-level enhancement for a loss amount less than 1,000,000 and greater than \$400,000) as opposed to 70-87 months (16-level enhancement for a loss amount greater than \$1,000,000). A district court commits procedural error where it fails to calculate (or improperly calculates) the Sentencing Guidelines range..." *United States v. Robinson*, 702 F. 3d 22, 38 (2d Cir. 2012). In *United States v. Davis*, the court of appeals vacated the defendant's sentence and remanded the case for full resentencing stating that, "the restitution order is riddled with the same problems as the loss figures. 863 F.3d 894 (DC Cir 2017).

The Second Circuit in *United States v. Lacey*, opined that the difference between the short-sale price and the mortgage amount constitutes objective evidence of the amount that a reasonable defendant might expect a bank would lose in the transaction; and that, it is hardly clear error for a sentencing judge to conclude that a price negotiated by a willing buyer and a willing seller is better evidence of the property's value than an appraisal by a purported expert. 699 F.3d 710 (2d. Cir 2012). However, short-sale prices may be accepted as a reasonable estimates of loss where they were negotiated, not fraudulent, and where the "evidence showed that the appraisals at the time of the fraudulent mortgage may not have been reliable." *Id.*

The short-sale price used here as a reasonable estimate of loss has, more than ever, been called into question by the recent disclosure of a complaint filed under seal pursuant to 31 U.S.C. Section 3730(b)(2) against Impac Secured Assets Corp., Impac Funding Corp., and Impac Mortgage Holdings, Inc., under 31 U.S.C. Section 3729. The complaint reveals specific conduct by the above-referenced Impac defendant's detailing misconduct that is both nefarious and actionable. Exhibit C - False Claim Act Complaint. Poignantly, the lawsuit details active and ongoing fraud by the Impac Defendant's perpetrated against governmental entities and governmental programs involving ten different Trusts, including of specific relevance Impac Secured Asset Trust 2007-2. See Ex.C at 2.

The lawsuit sets out the machinations by which Impact orchestrated multiple civil and potentially criminal violations including:

- a) failing to disclose its conflict of interest as the originator;
- b) implementing a separate scheme to under-report monthly delinquencies to cover up the original contractual breaches with the Trust; and
- c) committing wire fraud when knowingly issuing certificates to investors with untrue statements included within the offering documents.

See Ex.C at 9.

In retrospect, the reasonableness of the use of the short-sale price is called into question because although it is common for short sales to occur for less than fair market values making the loss foreseeable, what happened with the short-sale of 113 Chauncey Street, Brooklyn, NY was not legally acceptable. United States v. Lacey (in reviewing a district court's calculation, an appellate court must determine whether the trial court's method of calculating the amount of loss was legally acceptable). The 2010 short-sale price of \$225,000 was substantially 250% below the (already low) 2010 tax assessment value of \$563,000. Exhibit D - Property Shark Printout for 113 Chauncey Street, Bklyn, NY. At the time of Defendant's sentencing, on May 9, 2014, the tax assessment value for the property was \$649,000, over 288% of the short-sale price. Currently, the tax assessment value of

the property is \$1,328,000, over 590% of the short sale price. Indeed, it is extremely typical for the short sale price to be below the fair market value. However, a short sale price less than 240% of the tax assessment value, for a brownstone in Brooklyn, is egregiously atypical and highly suspect, as is the misconduct referenced in the complaint against the Impac defendants for violation of the False Claims Act. This again, illustrates that the intended loss calculation pursuant to 2B1.1(b)(1) to be riddled with the same problems as the restitution order. Therefore, the Defendant's request for a full resentencing should be granted.

D. The Defendant Should Be Resentenced Pursuant To
18 United States Code, Sections 3663A and 3664(e).

The plain language of 18 U.S.C. Sections 3663A (a)(1); (c)(1)(B); 18 U.S.C. Section 3664(e) requires a court to order restitution as part of sentencing where a defendant is convicted of a crime of fraud or deceit involving "an offense against property," "in which an identifiable victim or victims has suffered a...pecuniary loss." United States v. Zangari, 677 F.3d 86, 91 (2d. Cir. 2012). The Court's January 11, 2018 ruling, sets forth that ABC, WMC, and Impac Funding Corporation are no longer identified as victims and that the Restitution owed is no longer \$1,205,355 in accordance with the above-referenced statutes; and that Impac Secured Asset 2007-2 Trust is entitled to \$243,148.51 in restitution.

In the event that the Government's position remain

unchanged - that the Defendant's request for a full resentencing should not be granted because Defendant's argument that disparity between loss amounts adopted at sentencing and restitution ordered on remand elucidates procedural errors in sentencing is unavailing (GOM at 15); nonetheless, the Government has agreed that the Defendant should and will be resentenced for the imposition of a revised restitution order. Exhibit E - Government's opposition motion filed on March 16, 2018. On April 26, 2017, the Government stated, "...[O]nce we hear from Your Honor that a report [and] a recommendation has either been adopted or amended or some other order has been put into place, it is definitely our intention to make sure that you are here and present for any imposition of restitution." Exhibit F - Transcript of Status Conference on April 26, 2017.

E. The Defendant Should be Resentenced Pursuant To

18 U.S.C. Section 982(a)(2)

The United States Court of Appeals for the Eleventh Circuit, ruled that it is plain error to order forfeiture proceeds from wire fraud not affecting a financial institution. "Federal law requires that in sentencing defendants "convicted of a violation of, or conspiracy to violate... [18 U.S.C. section 1343] affecting a financial institution, 'courts' shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation." 18 U.S.C. Section 982(a)(2). United

States v. Mayer, 679 Fed. Appx. 895 (11th Cir. 2017). The Eleventh Circuit, therefore, concluded that the district court plainly erred in ordering Mayer to forfeit proceeds of wire fraud not affecting a financial institution, pursuant to Section 982(a)(2). Here, as in Mayer, the inclusion of non-FDIC insured entities in a forfeiture amount "is both plain and prejudicial, the error seriously affects the fairness, integrity or public reputation of judicial proceedings. Specifically, the Eleventh Circuit named the inclusion of losses from ABC (one of the same entities listed in Petitioners forfeiture order), as one of the non-FDIC entities, that caused the plain error and prejudicial effect resulting in its decision to vacate defendant's sentence. Id.

THIS COURT HAS THE POWER TO VISIT THE
PRESENTED ISSUES ON REMAND

Upon remand, the court has the authority to resentence a defendant, even if the issue was not considered by the remanding court. In giving guidance to district courts on typical scope of a mandate, the First Circuit has acknowledged that "On remand, courts are often confronted with issues that were never considered by the remanding court, and that, [b]roadly speaking, mandates require respect for what the higher court decide, not what it did not decide." Biggins v. Hazen Paper Co., 111 F.3d 205, 209 (1st Cir. 1997). Here, on appeal, the Second Circuit did not decide whether this Court erred in: its calculation of intended loss; the inclusion of relevant co-conspirator conduct; or awarding

forfeiture. In fact, one of the grounds on which the Government sought to have Defendant's request for a recall to mandate denied was premised on that, "while Defendant did challenge her sentence as procedurally and substantively unreasonable on appeal, she did not specifically argue that the district court erred in its calculation of loss." (GOM at 14).

More importantly, even where an appellate court's mandate does not contemplate resurrecting an issue on remand, the trial court may still possess some limited discretion to reopen the issue in very special situations. *United States of America v. Richard Harmon Bell*, 988 F.2d 247 (1st Cir. 1993). Thus, if this Court determines that the issue of intended loss; relevant conduct of co-conspirators pursuant to Section 1B1.3; and forfeiture has already been decided, it may still be reopened, due to the change in the law of the case and significant new evidence.

Reopening an already decided matter, however, requires a showing of exceptional circumstances, a threshold which, in turn, demands that the proponent accomplish one of three things; show that controlling legal authority has changed dramatically, proffer significant new evidence, not earlier obtainable in the exercise of due diligence; or convince the court that a blatant error in the prior decision will, if uncorrected, result in a serious injustice. *Id.* This Court should accept the opportunity to render a determination in the issues presented herein, because the Court has by the adoption

of the Magistrate's Report and Recommendation changed the controlling fair market value of the collateral at issue, thereby affecting the "credit against loss," pursuant to Application Note 3(E)(ii) and resulting loss amount. In addition, during the MVRA hearings, for the first time, evidence was elicited from witnesses about the value of the properties from broker's price opinions. The tax assessment values used to calculate the intended loss has now been determined by the Government and its witnesses not to be a fair estimation of the property values for the determination of loss. Notably, the Government recently noted that, "While the Government did ask the district court to adopt the loss calculations set forth in the PSR, it did not argue that it was the amount of loss intended, but rather a fair estimation of the actual losses incurred by the named lenders given the information available at that time." See Ex. D.

Additionally, the Eleventh Circuit in *Mayer*, ruled that it is plain (blatant) error to order forfeiture of proceeds from wire fraud not affecting a financial institution. Indeed, at sentencing the Government conceded that there was no financial institution involved. "We also noted that paragraphs 93, 101 and page three [in the PSR] needed to be corrected to note that the application maximum term of imprisonment is actually 20 years and not 30 years and that the maximum fine is actually \$250,000, not \$1,000,000 because financial institutions were not involved." ST: 21. Lastly, during the MVRA hearings, the first available opportunity to the Defendant to cross examine a witness regarding 641 East 87th

Street, Brooklyn, NY, Mr. Schwegel's testimony clearly supported that an enhancement based on relevant co-conspirator conduct was not appropriate. The above-referenced issues each attributed to enhancements in Defendant's sentence, resulting in serious injustice, which will become increasingly prejudicial if uncorrected.

CONCLUSION

Accordingly, this Court should based on its authority and the merits of Defendant's arguments, grant Defendant's request for a full resentencing.

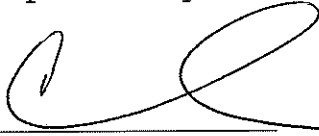
Footnotes:

Numerical references preceded by the letters "ST" are to the sentencing transcript pages of Defendant's sentencing on May 9, 2014. Numerical references preceded by the letters "HT" are to the transcript pages of the mandatory victim restitution hearings conducted on November 16, 2015 and on December 8, 2015. Numerical references preceded by the letters "GOM" are to the Government's opposition motion brief filed in the second circuit on March 16, 2018.

Date: Danbury, CT

May 18, 2018

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line that extends to the right.

Cassandra Cean

REG. NO. 79210-053

DANBURY FPC

33 1/2 PEMBROKE

DANBURY, CT 06811

Appearing Pro Se

"Exhibit A"



Property Report by PropertyShark.com

Property Report for:

8055 Stillwell Pl, Brooklyn, NY 11204

B. Overview

B1. Overview

Address

Primary address 8055 Stillwell Pl
 Alternate address(es) 55 Stillwells Pl
 8909 Stillwells Pl
 Zip code 11204
 Borough Brooklyn
 Block & lot 08055-0055
 Sanborn map 317 063
 Tax map 32403

Owner

Name Santander Bank, N.A.
 Address 1130 BERKSHIRE
 BOULEVARD MAIL CODE
 11-900-TX
 Reading, PA 19610
 Purchase date 01/18/2017
 Purchase price \$1

Property Taxes

Tax class 1
 Tax assessor's market value \$439,000
 Projected tax assessor's market value \$464,000
 Current tax bill \$3,311
 Projected tax bill \$3,510

Neighborhood

Neighborhood Canarsie
 Community district 18
 Closest Police station 0.84 Miles
 Closest Fire station 0.72 Miles
 School district number 18
 Census tract 992

Hazards & Environment

Toxic site on this property No
 Neighboring toxic sites No

Building

Building class One Story - Permanent Living
 Quarter (A2)
 Building sqft 860
 Unfinished sqft 430
 Building dimensions 20 ft x 16 ft
 Roof height 19 ft
 Ground elevation 12 ft
 Year built 1935 (estimated)
 Stories 2
 Has extension Yes
 Style Old style
 Construction type Frame
 Exterior wall Wood
 Exterior condition High average

Use

Residential units 1
 Residential sqft 860
 Average residential unit size 860
 Certificate(s) of occupancy [Click here](#)

Lot

Lot sqft 3,250
 Lot shape Regular
 Lot dimensions 25 ft x 130 ft
 Corner lot No
 Buildings on lot 1

Zoning

Zoning districts R4A
 Zoning map 23c

Floor Area Ratio (FAR)

Residential FAR 0.9
 Facility FAR 2
 FAR as built 0.26
 Allowed usable floor area 2,925
 Usable floor area as built 845
 Unused FAR 2,080

Violations

ECB violations 2

B2. NEW Real Owners & Mortgages

Our dedicated team of 30 full-time employees has been manually researching owner names, phone numbers, and email addresses for

LLC-owned properties in NYC. They dig through documents, scour multiple resources and verify phone numbers, to save you time whenever you need to reach the right person. So far, we have researched over 240,000 properties and we are monitoring deeds every day in order to find the new owners and display the updates immediately.

Name	Address	Phone	Email
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Mortgages

Mortgage date	Mortgage amount	Bank	Public Notes
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The researched contact info is now included in our new subscription plan - Platinum.

As an existing subscriber, you can upgrade your current plan to Platinum in order to quickly get the contact info you need. Call our Customer Support Team at 718-715-1758 for your special upgrade price.

B5. For Sale

No active listing found for this property.
Have your listing displayed on a high-traffic website by visiting Point2 Homes.

C. Ownership

C1. Registered Owner

Santander Bank, N.A.

1130 BERKSHIRE BOULEVARD MAIL CODE 11-900-TX

Reading, PA 19610

Source: Assessment Roll

Last recorded: 12/15/2017



Add to Address Book

Ownership data is aggregated from governmental sources like deeds and the assessment roll. If the registered owner is a LLC or other form of company, use our Real Owners service to find the person behind the company.

F. Sales & Value

F1. Neighborhood Price History

Median price/sqft	\$453
Neighboring properties	15

Recent sales of similar properties

Address	Sale price	Sale date	Sqft	Price/sqft
951 E 88th St	\$507,500	12/22/2017	812	\$625
1365 E 96th St	\$458,860	11/27/2017	740	\$620
938 E 88th St	\$505,000	2/7/2018	871	\$579
1365 E 93rd St	\$418,000	5/12/2017	800	\$522
1370 E 96th St	\$469,000	1/26/2017	920	\$509
1575 Canarsie Rd	\$400,000	7/13/2017	805	\$496
9805 Avenue L	\$390,000	6/5/2017	820	\$475
665 E 83rd St	\$399,000	3/13/2018	880	\$453
731 E 85th St	\$377,000	9/27/2017	860	\$438
1332 E 98th St	\$349,000	10/27/2017	870	\$401

Use our Comparable Sales Tool to select your own list of recent sales, or read our Market Reports for an analysis of sale prices across a neighborhood.

G. Property Tax

G7. Assessment History

Year	Building class	Market value	Assessed value	Taxable	Tax rate%	Base tax	Property tax
2017/18	A2	\$439,000	\$16,246	\$16,246	20.385%	\$3,312	\$3,312
2016/17	A2	\$325,000	\$15,327	\$15,327	19.991%	\$3,064	\$3,064
2015/16	A2	\$241,000	\$14,460	\$14,460	19.554%	\$2,828	\$2,828
2014/15	A2	\$241,000	\$14,460	\$14,460	19.157%	\$2,770	\$2,770
2013/14	A2	\$241,000	\$14,460	\$14,460	19.191%	\$2,775	\$2,775
2012/13	A2	\$270,000	\$16,200	\$16,200	18.569%	\$3,008	\$3,008
2011/12	A2	\$306,000	\$17,391	\$17,391	18.205%	\$3,166	\$3,166
2010/11	A2	\$383,000	\$17,376	\$17,376	17.364%	\$3,017	\$3,017
2009/10	A2	\$397,000	\$16,420	\$16,420	17.088%	\$2,806	\$2,806
2008/09	A2	\$413,000	\$16,255	\$16,255	16.196%	\$2,633	\$2,633
2007/08	A2	\$422,000	\$15,344	\$15,344	15.434%	\$2,368	\$2,368
2006/07	A2	\$358,000	\$14,493	\$14,493	16.118%	\$2,336	\$2,336
2005/06	A2	\$359,000	\$14,480	\$14,480	15.746%	\$2,280	\$2,280
2004/05	A2	\$320,000	\$13,684	\$13,684	15.094%	\$2,065	\$2,065
2003/04	A2	\$238,000	\$13,546	\$13,546	14.55%	\$1,971	\$1,971

Disclaimer

"Exhibit B"



Property Report by PropertyShark.com

Property Report for:

641 E 87th St, Brooklyn, NY 11236

B. Overview

B1. Overview

Mortgage date	Mortgage amount	Bank	Public Notes
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The researched contact info is now included in our new subscription plan - Platinum.

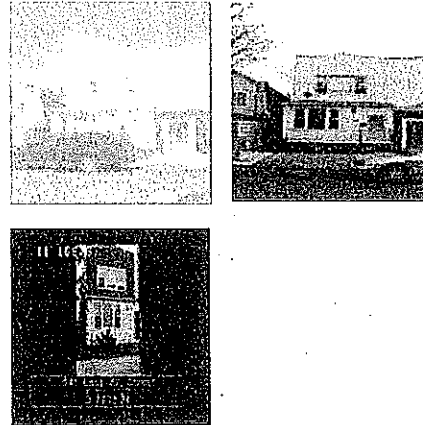
As an existing subscriber, you can upgrade your current plan to Platinum in order to quickly get the contact info you need. Call our Customer Support Team at 718-715-1758 for your special upgrade price.

B3. Photos

Open Google Street View



Upload photos for this property



Uploaded in June, 2016 by Joe Strini

B6. Sale & Property History

Date	Event	Amount	Details
1/6/2017	Lis pendens filed	\$455,000	
1/14/2014	Deed transfer recorded	\$11,000	
10/1/2012	Lis pendens filed		
12/22/2008	Lis pendens filed	\$650,000	
6/27/2007	Lis pendens filed	\$650,000	
8/31/2006	Deed transfer recorded	\$650,000	

Date	Event	Amount	Details
8/16/2006	Lis pendens filed		
5/10/2006	Lis pendens filed	\$530,000	
10/27/2005	Deed transfer recorded	\$530,000	
4/14/2005	Deed transfer recorded	\$445,000	
1/13/2004	Lis pendens filed		
2/21/2002	Lis pendens filed		

C. Ownership

C1. Registered Owner

Royal Gardens East 87 Corp.

320 Roebling St #412

Brooklyn, NY 11211

Source: Assessment Roll

Last recorded: 12/15/2017

 Phone Lookup

 Add to Address Book

Ownership data is aggregated from governmental sources like deeds and the assessment roll. If the registered owner is a LLC or other form of company, use our Real Owners service to find the person behind the company.

F. Sales & Value

F1. Neighborhood Price History

Median price/sqft \$245
Neighboring properties 6

Recent sales of similar properties

Address	Sale price	Sale date	Sqft	Price/sqft
1029 Remsen Ave	\$690,000	2/22/2018	2,048	\$336
563 E 86th St	\$550,000	11/21/2016	1,800	\$305
751 E 87th St	\$499,000	11/15/2017	1,656	\$301
1027 Remsen Ave	\$390,390	6/9/2017	2,048	\$190
8916 Flatlands Ave	\$367,317	9/27/2017	2,000	\$183
660 E 84th St	\$230,000	12/21/2017	1,800	\$127

Use our Comparable Sales Tool to select your own list of recent sales, or read our Market Reports for an analysis of sale prices across a neighborhood.

G. Property Tax

G7. Assessment History

Year	Building class	Market value	Assessed value	Taxable	Tax rate%	Base tax	Property tax
2017/18	B2	\$589,000	\$19,108	\$19,108	20.385%	\$3,895	\$3,895
2016/17	B2	\$507,000	\$18,032	\$18,032	19.991%	\$3,605	\$3,605
2015/16	B2	\$539,000	\$18,014	\$18,014	19.554%	\$3,522	\$3,522
2014/15	B2	\$515,000	\$17,017	\$17,017	19.157%	\$3,260	\$3,260
2013/14	B2	\$463,000	\$16,123	\$16,123	19.191%	\$3,094	\$3,094
2012/13	B2	\$468,000	\$15,924	\$15,924	18.569%	\$2,957	\$2,957
2011/12	B2	\$550,000	\$15,027	\$15,027	18.205%	\$2,736	\$2,736
2010/11	B2	\$518,000	\$15,012	\$15,012	17.364%	\$2,607	\$2,607
2009/10	B2	\$591,000	\$14,181	\$14,181	17.088%	\$2,423	\$2,423
2008/09	B2	\$613,000	\$13,436	\$13,436	16.196%	\$2,176	\$2,176
2007/08	B2	\$556,900	\$13,270	\$13,270	15.434%	\$2,048	\$2,048
2006/07	B2	\$463,900	\$12,523	\$12,523	16.118%	\$2,018	\$2,018
2005/06	B2	\$398,900	\$12,510	\$11,080	15.746%	\$1,970	\$1,745
2004/05	B2	\$363,000	\$11,818	\$10,318	15.094%	\$1,784	\$1,557
2003/04	B2	\$318,000	\$11,197	\$9,627	14.55%	\$1,629	\$1,401

Disclaimer

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All data comes from government sources. No attempt has been made to validate it. No attempt has been made to validate the accuracy of the programming of this web site. Do not rely on this report to support investment decisions. The only authoritative source for the information in this report is the government agencies from which the data was acquired.

Address

Primary address 641 E 87th St
Zip code 11236
Borough Brooklyn
Block & lot 07992-0021
Sanborn map 317 045
Tax map 32402

Owner

Name Royal Gardens East 87 Corp.
Address 320 Roebling St #412
Brooklyn, NY 11211
Purchase date 01/14/2014
Purchase price \$11,000

Property Taxes

Tax class 1
Tax assessor's market value \$589,000
Projected tax assessor's market value \$613,000
Current tax bill \$3,895
Projected tax bill \$3,943


Neighborhood

Neighborhood Canarsie
Community district 18
Closest Police station 0.55 Miles
Closest Fire station 0.50 Miles
School district number 18
Census tract 958


Hazards & Environment

Toxic site on this property No
Neighboring toxic sites No

Building

Building class Two Family Frame (B2) 
Building sqft 1,802
Building dimensions 17 ft x 37 ft
Roof height 26 ft
Ground elevation 18 ft
Year built 1930 (estimated)
Stories 2


Use

Residential units 2
Residential sqft 1,802
Average residential unit size 901
Certificate(s) of occupancy [Click here](#) 


Lot

Lot sqft 2,000 
Lot dimensions 20 ft x 100 ft
Corner lot No
Buildings on lot 1

Zoning

Zoning districts R4-1 
Zoning map 23c

Floor Area Ratio (FAR)

Residential FAR 0.9
Facility FAR 2
FAR as built 0.90 
Allowed usable floor area 1,800
Usable floor area as built 1,800

Violations

DOB violations 1
Marshals evictions in building Yes

B2. NEW Real Owners & Mortgages

Our dedicated team of 30 full-time employees has been manually researching owner names, phone numbers, and email addresses for LLC-owned properties in NYC. They dig through documents, scour multiple resources and verify phone numbers, to save you time whenever you need to reach the right person. So far, we have researched over 240,000 properties and we are monitoring deeds every day in order to find the new owners and display the updates immediately.

Name	Address	Phone	Email
------	---------	-------	-------

Mortgages

"Exhibit C"

1 Christopher Hellmich (SBN 224169)
chellmich@hellmichlaw.com
2 **HELLMICH LAW GROUP, PC**
5753-G E. Santa Ana Canyon Rd, #512
3 Anaheim Hills, CA 92807
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4 Fax: 714.974.7733

5 Talcott J. Franklin (pro hac vice motion to be filed)
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6 **TALCOTT FRANKLIN PC**
1521 North Cooper Street, Suite 340
7 Arlington, TX 76011
Tel: 214.736.8730
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9 *Attorneys for Relator*

10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION

14 PLAINTIFF UNDER SEAL

15
16 v.

17
18 DEFENDANTS UNDER SEAL

CASE NO.

SACV 16-01983 JVS(JCG)x

COMPLAINT FOR FALSE CLAIMS ACT
VIOLATIONS UNDER 31 U.S.C. § 3729 ET SEQ.
AND STATE AND MUNICIPAL EQUIVALENTS

FILED BY HAND

FILED UNDER SEAL PURSUANT TO 31 U.S.C.
§ 3730(b)(2)

JURY TRIAL DEMANDED

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CENTRAL DIST. OF CALIF.
SANTA ANA

FILED

FEE
PAID

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Attorneys for Relator

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION

UNITED STATES OF AMERICA, *ex rel.*
 JEREMY CALVA, and on behalf of the STATE
 OF NEW YORK, the STATE OF
 CALIFORNIA, the STATE OF DELAWARE,
 the DISTRICT OF COLUMBIA, the STATE
 OF FLORIDA, the STATE OF HAWAII, the
 STATE OF ILLINOIS, the STATE OF
 INDIANA, the STATE OF IOWA, the STATE
 OF MINNESOTA, the STATE OF
 MONTANA, the STATE OF NEVADA, the
 STATE OF NEW JERSEY, the STATE OF
 NEW MEXICO, the STATE OF NORTH
 CAROLINA, the STATE OF RHODE
 ISLAND, the COMMONWEALTH OF
 VIRGINIA, the CITY of CHICAGO, the CITY
 of MIAMI, the CITY of NEW YORK, and the
 CITY of SAN FRANCISCO,

Plaintiff,

v.

IMPAC SECURED ASSETS CORP., IMPAC
 FUNDING CORP., and IMPAC MORTGAGE
 HOLDINGS, INC.,

Defendants.

Case No.

COMPLAINT FOR FALSE CLAIMS ACT
 VIOLATIONS UNDER 31 U.S.C. § 3729 ET SEQ.
 AND STATE AND MUNICIPAL EQUIVALENTS

FILED BY HAND

FILED UNDER SEAL PURSUANT TO 31 U.S.C.
 § 3730(b)(2)

JURY TRIAL DEMANDED

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1 **I. INTRODUCTION**

2 **A. Nature Of The Action**

3 1. Relator, Jeremy Calva CPA CTP CFF Cr.FA, brings this *qui tam* action pursuant to the
 4 federal False Claims Act ("FCA"), 31 U.S.C. § 3729, *et seq.*, and analogous State and Municipal FCAs,¹
 5 to recover damages and civil penalties from Impac Secured Assets Corp., Impac Funding Corp., and
 6 Impac Mortgage Holdings Inc. (hereinafter "Impac Defendants" or "Impac"), on behalf of the United
 7 States of America, the States, and the Municipalities (hereinafter "Government Plaintiffs") arising from
 8 the Impac Defendants' fraud, misrepresentation, gross misreporting and breach of contractual and
 9 fiduciary duties from 2005 through the present. The Impac Defendants knowingly placed defective
 10 mortgages into ten residential mortgage-backed securitization ("RMBS") trusts issued in 2005, 2006 and
 11 2007 (collectively, the "Trusts"), The Impac Defendants then issued and underwrote certificates offered,
 12 sold, or otherwise conveyed to the Government Plaintiffs and oversaw servicing of the loans within the
 13 Trusts in the role of master servicer.

14 2. The Government Plaintiffs identified above also include certain federal government
 15 programs known as Fannie Mac and Freddie Mac, as well as federal government insurance
 16 organizations the Federal Deposit Insurance Corporation ("FDIC"), National Credit Union
 17
 18

19 ¹ The California False Claims Act, Cal. Gov't Code § 12650 *et seq.* (Deering 2000); the
 20 Delaware False Claims and Reporting Act, Del. Code Ann. tit. 6, § 1201 *et seq.* (2000); the District of
 21 Columbia False Claims Act, D.C. Code § 2-308.13 *et seq.* (2000); the Florida False Claims Act, Fla.
 22 Stat. § 68.081 *et seq.* (2000); the Hawaii False Claims Act, Haw. Rev. Stat. § 661-21 *et seq.* (2006); the
 23 Illinois False Claims Act, 740 Ill. Comp. Stat. § 175/1 *et seq.* (2000); the Indiana False Claims and
 24 Whistleblower Protection Act, Ind. Code § 5-11-5.5 *et seq.* (2007); the Iowa False Claims Act, Iowa
 25 Code § 685.1 *et seq.* (2010); the Massachusetts False Claims Act, Mass. Gen. Laws ch. 12, § 5A *et seq.*
 26 (2007); the Minnesota False Claims Act, Minn. Stat. § 15C.01 *et seq.* (2011); the Montana False Claims
 27 Act, Mont. Code Ann. § 17-8-401 *et seq.* (1999); the Nevada False Claims Act, Nev. Rev. Stat.
 28 § 357.010 *et seq.* (2007); the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1 *et seq.* (West
 2007); the New Mexico Fraud Against Taxpayers Act, N.M. Stat. Ann. § 44-9-1 *et seq.* (2007); the New
 York False Claims Act, N.Y. State Fin. Law § 187 *et seq.* (McKinney 2010); the North Carolina False
 Claims Act, N.C. Gen. Stat. § 1-605 *et seq.* (2010); the Rhode Island False Claims Act, R.I. Gen. Laws §
 9-1.1-1 *et seq.* (2008); and the Virginia Fraud Against Taxpayers Act, Va. Code Ann. § 8.01-216.1 *et*
seq. (2011) (collectively "State *qui tam* statutes" or "*Qui Tam States*"); the City of Chicago False Claims
 Act, Chicago Code of Ordinances §§ 1-22-020(1)-(4), 1-22-020(7); the New York City False Claims
 Act, NYC Admin. Code §§ 7-803 (a) (1)-(a)(4), 7-803 (a)(7); Miami False Claims Act, Miami-Dade
 County False Claims Ordinance Section 21-255 *et seq.*; and the City of San Francisco False Claims Act,
 San Francisco Admin. Code §§ 7-803 *et seq.* (collectively "Municipal *qui tam* laws").

1 Administration (“NCUA”) and the State and Municipal pension funds across the country that purchased
2 the securities (the “Government Programs”).

3 3. The Trusts at issue are:

4 a. Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2005-1
5 (“Impac 2005-1 Trust”);

6 b. Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2005-2
7 (“Impac 2005-2 Trust”);

8 c. Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2006-1
9 (“Impac 2006-1 Trust”);

10 d. Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2006-2
11 (“Impac 2006-2 Trust”);

12 e. Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2006-3
13 (“Impac 2006-3 Trust”);

14 f. Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2006-4
15 (“Impac 2006-4 Trust”);

16 g. Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2006-5
17 (“Impac 2006-5 Trust”);

18 h. Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2007-1
19 (“Impac 2007-1 Trust”);

20 i. Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2007-2
21 (“Impac 2007-2 Trust”); and

22 j. Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2007-3
23 (“Impac 2007-3 Trust”).

24 **B. Brief Description Of What The Impac Defendants Did**

25 4. At the time of their creation in 2005, 2006 and 2007, the Trusts held thousands of
26 mortgage loans totaling \$12.5 billion in assets. Multiple civil and potentially criminal violations
27 occurred during the formation and administration of the Trusts, including:
28

1 a. Four of ten Trusts² reported false and misleading mortgage loan schedules filed
2 with the Securities and Exchange Commission ("SEC") with more favorable "paid-to" dates than
3 disclosed in the first available loan-level remittance data files;

4 b. At least eight of ten Trusts³ contained delinquent loans in monetary default as of
5 the Closing Date. The Impac Defendants had firsthand knowledge of these monetary defaults,
6 but failed to provide notice to the Trustee, which would have required Impac to repurchase the
7 defective loans from the Trusts. Impac's failure to provide this notice is based on the conflicted
8 roles in the administration of the Trusts, as Impac served as both the master servicer and the
9 seller, sponsor, depositor, issuer, and in some cases the originator of almost all loans in the ten
10 Trusts;

11 c. Impac failed to disclose its conflict of interest as the originator for most loans as
12 well as the sponsor, depositor, issuer and master servicer for all Trusts;

13 d. Impac's failure to provide notice of even one instance of default or other
14 representation and warranty violations breached its contractual duty to notice breaches where the
15 giving of notice would have required Impac to repurchase the defective loans from the Trust's
16 loan pool, thereby maximizing the recovery for the Trust's certificateholders;

17 e. Impac perpetuated its misrepresentations regarding loan delinquencies as of the
18 Closing Date of each Trust by failing to publish the loan-level remittance data for five of the ten
19 Trusts until the fourth or greater month of reporting;⁴

20 f. Impac implemented a separate scheme to under-report monthly delinquencies to
21 cover up the original contract breaches by calculating loan delinquency rates in a manner not in
22 compliance with the stated methodology contained in the Trusts' governing documents nor
23 regulations promulgated by the SEC and falsified Cut-Off Dates in mortgage loan schedules.

24
25 ² Impac 2006-3 Trust, Impac 2006-4 Trust, Impac 2006-5 Trust, and Impac 2007-1 Trust.

26 ³ The two Trusts, Impac 2006-1 and Impac 2007-3, which were not evaluated failed to provide
27 their first loan level remittance file until years after the Closing Date.

28 ⁴ A particularly egregious example is found in the Impac 2007-3 Trust, where the first available
loan-level data file was provided in July 2011, more than four years after the April 30, 2007 Closing
Date.

1 This scheme systematically underreported loan delinquencies within the Trusts and continues to
2 the present day;

3 g. Impac failed to declare an event of default caused by their failure to perform their
4 duties to provide notice of breaching loans for repurchase;

5 h. Impac committed wire fraud when knowingly issuing certificates to investors with
6 untrue statements included within the offering documents.

7 5. After the Closing Date and during the administration of the Trusts up to and including the
8 present day, the Impac Defendants knowingly failed and continue to fail to take reasonable actions to
9 protect the assets of the Trusts in their roles as the master servicer, seller, sponsor, depositor and issuer.

10 6. By failing to disclose the truth regarding the quality of the mortgage loans in the Trusts,
11 Impac knowingly led investors including the Government Plaintiffs to overpay for securities issued
12 under false pretenses, with both misrepresentations made in the offering documents and contractual
13 breaches left uncured by Impac. Impac's actions also enabled the Trusts to obtain more favorable credit
14 ratings from ratings agencies (and thus better price points for the certificates). Impac thereby wrongfully
15 extracted billions of dollars in revenue from private and public investors, including Government
16 Programs.

17 C. **Brief Description Of How The Impac Defendants Executed The Scheme**

18 7. The Certificates sold in 2005-07 were securitized pursuant to shelf registration statements
19 (the "Registration Statements") that had been filed with the SEC for each of the Trusts and subsequently
20 sold to investors, including Government Programs. As part of the Registration Statement for each
21 securitization, a prospectus ("Prospectus") and prospectus supplement ("Prospectus Supplement"), Free
22 Writing Prospectus ("FWP"), and Pooling and Servicing Agreement ("PSA") were filed with the SEC.
23 The same documents were used to market the securities to investors, including to the Government
24 Programs.

25 8. The Registration Statements contained disclosures concerning, among other things, the
26 paid-to date of the loans in the Trusts and the lack of any delinquent loans as of each Trust's Cut-Off
27 Date, the creditworthiness of the borrowers, and the origination and underwriting standards used to
28 make and approve the loans. All are key metrics in determining the credit quality of the mortgage loans.

1 9. The Impac Defendants made false and misleading statements in offering documents;
2 developed a scheme to under-report and hide delinquencies, defaults, and breaching loans; and failed to
3 provide notice of breach for a single loan in these Trusts.

4 10. Had the Impac Defendants disclosed the true nature of the mortgage loans and correctly
5 performed their duties as master servicer, then:

6 a. At least eight of the Trusts would have included repurchased loans for loans in
7 default on the Closing Date;

8 b. At least four of the Trusts would have had to disclose paid-to dates in their Cut-
9 Off Date mortgage loan schedule, painting a less favorable picture for investors; and

10 c. Closing Date default breaches, and any potential Cut-Off Date delinquency
11 misrepresentations, would have been detected by investors, including the Government Plaintiffs,
12 simply by reviewing the first remittance report.

13 11. Impac continues to make misrepresentations of loan delinquency rates in monthly
14 distribution remittance reports that are still being issued to the present day. Impac's delinquency
15 reporting methodology is not in conformance with Regulation AB, nor does it comply with the
16 delinquency reporting methodology it represented it uses in the Trusts' PSAs.⁵ As a result, delinquency
17 data underlying the monthly remittance reports was improperly enhanced by capturing approximately
18 two weeks of late payments and backdating them.

19 **D. The Impac Defendants' Misconduct Was Not Publicly Disclosed**

20 12. As illustrated in the following paragraphs, nothing on the face of the publicly available
21 narratives, summary tables, or loan-level data within the mortgage loan schedule files revealed the true
22 state of facts from which an inference of fraud could be reached, let alone revealed the conclusion of
23 fraud.

24 13. Six Trusts failed to publish a mortgage loan schedule as of their Cut-Off Date that
25 included a paid-to or next due date.

26
27 ⁵ Impac has represented that it uses the Office of Thrift Supervision's delinquency reporting
28 methodology (the "OTS Method"), which is allowable under Regulation AB. *See* Impac 2007-3 Trust
Prospectus Supplement. Impac purports to use this method for all of the Trusts.

1 14. Four Trusts included false paid-to dates within their Cut-Off Date mortgage loan
2 schedules filed with the SEC, thereby covering up the original fraud. The certainty of misrepresentation
3 was determined by:

- 4 a. Extracting the mortgage loan schedules from public filings;
5 b. Counting the total loans with each paid-to date; and
6 c. Comparing the count for each paid-to date against the first available loan-level
7 remittance file, post Cut-Off and closing date.

8 15. Numerous loans had paid-to dates in the first available loan-level remittance report prior
9 to the published Cut-Off Date mortgage loan schedule, indicating in each case that the mortgage loan
10 schedule provided on the Cut-Off Date was altered and falsified, thereby misrepresenting the quality of
11 the mortgage loans to investors.

12 16. All four mortgage loan schedules filed with the SEC failed to provide a delinquency
13 indicator on the loan record.

14 17. An investor would have had to wait until the first available loan-level remittance report
15 data set was available and then look for loans which were still in breach of the monetary default
16 provision and/or had paid-to dates which were prior to those included in the Cut-Off Date mortgage loan
17 schedule to detect the fraud and misrepresentation.

18 18. Only five of the ten Trusts published a loan-level schedule along with the first remittance
19 report. Most egregiously, the Impac 2006-1 Trust and the Impac 2007-3 Trust waited to publish their
20 first loan-level remittance reports until January 2009 and July 2011 respectively.

21 19. The Prospectus Supplements for each Trust either fail to disclose delinquency
22 information as of the Cut-Off Date or disclosed that none of the loans were 30 days or more delinquent
23 as of the Cut-Off Date. These disclosures are required by Regulation AB. The Impac Defendants,
24 however, employed a delinquency reporting methodology of their own making and not in compliance
25 with Regulation AB standards in order to under-report loan delinquencies.

26 20. The Impac monthly remittance reports are not public disclosures. Within approximately
27 one year after each Trust was formed, and not later than 2008, Deutsche Bank National Trust Co., the
28

1 Trustee for eight of the Trusts, notified the SEC that it would no longer file monthly remittance reports.⁶
2 That is, the Trustee was no longer obligated to file, and did not file, with the SEC the monthly
3 remittance reports after filing a 15-15D with the SEC. Instead, these were available only through private
4 websites maintained by the Trustee.

5 21. Even if the remittance reports were publicly available, they did not contain the loan-level
6 data necessary to perform the analysis uncovering the full magnitude of the fraud in all Trusts.

7 22. Further, the first loan-level remittance file was only available for five of the ten Trusts.

8 23. As such, it was impossible to determine the true nature of delinquencies within the Trusts
9 without conducting an independent investigation into the performance of individual loans that included
10 gathering raw information from multiple independent sources and undertaking rigorous analysis to
11 identify the misrepresentations and fraud committed by Impac. This process included:

- 12 a. Extracting out the mortgage loan schedule as of Cut-Off Date, if available;
- 13 b. Summarizing the data by balances and grouping them into buckets for each
14 associated "next due" or "paid through" date;
- 15 c. Understanding the differences between these fields for appropriate delinquency
16 measurement against a Cut-Off Date;
- 17 d. Understanding the effective date of the mortgage loan schedule as it applies to the
18 specific Trust;
- 19 e. Confirming the mortgage loan schedule Cut-Off Date was the same as the Trust's
20 Cut-Off Date;
- 21 f. Applying the Office of Thrift Supervision ("OTS") Method of delinquency
22 determination appropriately; and
- 23 g. Comparing the paid-to dates of loans in the mortgage loan schedule as of Cut-Off
24 Date to the paid-to dates of loans in the first available loan-level remittance to detect falsely
25 reported Cut-Off Date paid-to-dates in public filings with the SEC and/or for the mortgage loan
26 schedules attached to the PSAs.

27
28 ⁶ Wells Fargo Bank was the trustee for the Impac 2005-1 Trust and the Impac 2005-2 Trust and
filed similar 15-15D filings within similar time frames.

1 24. As the foregoing illustrates, neither the conclusion of fraud nor the inference of fraud was
2 presented by the publicly available documents. The process of developing, learning, and uncovering the
3 nature and full magnitude of the fraud based on trial-and-error analysis of documents for which no
4 roadmaps previously existed took Relator approximately twelve months of analyzing data and Trust
5 documents and applying specialized knowledge and expertise.

6 25. The Trustee has been provided with information regarding the false statements and
7 comparison of paid-to dates between the Cut-Off data in the mortgage loan schedules and the first
8 available loan-level remittance reports. The Trustee has nonetheless failed to provide currently
9 unavailable first loan-level remittance reports to show the full extent of the breaches and false
10 statements in SEC filings.

11 26. In short, the raw data in the Impac Cut-Off Date mortgage loan schedules provided no
12 actual loan-level disclosures regarding delinquency (there is no "delinquency" field), no indication as to
13 whether any particular "next due" or "paid through" date would make a loan "delinquent" under the
14 Prospectus Supplement on the date the mortgage loan schedule was generated, and no indication of
15 fraud or misrepresentation regarding the delinquency percentage that should have been determined
16 based on the mortgage loan schedule data. In fact, the mortgage loan schedules on their own provide
17 false paid-to dates and data that is meaningless without the kind of sophisticated analysis conducted by
18 the Relator. Utilizing the mortgage loan schedules as of the Cut-Off Date provided within the public
19 filings on their own, it would appear the Trusts are comprised of loans that have all made their payments
20 due as of and prior to the Cut-Off Date. But that is not the case.

21 **E. The Impac Defendants' Misconduct Is Actionable Under The FCA.**

22 27. The Impac Defendants' knowing misrepresentations of paid-to dates and delinquencies,
23 and the ongoing and continuous covering up these delinquencies by publishing false monthly remittance
24 reports were actions material to the investors' (including the Government Programs') decisions to
25 purchase the certificates issued by the Trusts, the price they were willing to pay, and their ongoing
26 decisions to hold them.

1 28. The Impac Defendants knew this, as evidenced by the securities' issuance documents,
2 under which the Impac Defendants were obligated at the very least to replace or buy back any loans that
3 were materially misrepresented in the securitization.⁷

4 29. Investors (including the Government Plaintiffs) would not have purchased and held these
5 certificates but for the Impac Defendants' material misrepresentations and omissions concerning the
6 initial mortgage loan default rates, delinquencies, and underwriting breaches within the underlying
7 mortgage pool.

8 30. In addition, investors (including the Government Plaintiffs) would not have continued
9 holding the Certificates, and/or would have enforced their rights to have the breaching loans repurchased
10 or replaced, but for the Impac Defendants' ongoing material misrepresentations and omissions
11 concerning the current delinquency rates made in monthly remittance reports for each Trust.

12 31. As a direct and proximate result of the Impac Defendants' misconduct, the ten Trusts
13 contained loans that have actual and projected losses, based on bankruptcies, short sales, real estate
14 owned properties ("REOs"), and foreclosures, in excess of \$282 million as of December 2015, just for
15 the positions held in custody by one Government Program, the National Credit Union Administration
16 ("NCUA").

17 32. The Impac Defendants are liable for the misstatements and omissions of material fact
18 contained in the Registration Statements and other offering materials because they prepared, signed,
19 filed, and/or used these documents to market and sell certificates to the investors or because they
20 directed and controlled the entities that did so.

21 33. The Impac Defendants continue to be liable for the misstatements and omissions of
22 material fact contained in the monthly remittance reports up to and including the current period wherein
23 they have continued the material under-reporting of delinquencies in the Trusts.

24 34. The Impac Defendants' conduct constitutes violations of the Federal, State and Municipal
25 False Claims Acts, including without limitation:

26
27
28 ⁷ This is not to say that the issues in these Trusts can be reduced to mere "put-back" status. The
fraudulent securitization and intentional misrepresentation in the inducement of investors to purchase
otherwise invalid securities have ramifications far beyond a mere contractual obligation.

1 a. Presenting or causing to present "false or fraudulent claims" to numerous federal
2 government agencies and insurers, including but not limited to Fannie Mae, Freddie Mac, the
3 Home Affordable Modification Program ("HAMP"), the NCUA, the FDIC, and to hundreds of
4 State and Municipal agencies and State employee pension programs.

5 b. Making or causing to be made false records or statements about the loan
6 delinquencies and default status of loans on the closing date, along with other known contractual
7 breaches underlying the securities, and therefore the risk and value of the securities, which were
8 material to the decisions of investors (including the Government Plaintiffs) to purchase and hold
9 the securities;

10 c. Impeding the SEC from carrying out its mission to protect investors, maintain
11 fair, orderly, and efficient markets, and facilitate capital formation, including by concealing the
12 initial and ongoing fraud upon which the Impac Defendants would otherwise be required to
13 disgorge to the SEC all losses they avoided, including not only the losses the Impac Defendants
14 avoided and passed on to the Government Programs, but also over \$11 billion in losses they
15 passed on generally to all investors of these fraudulent securities.

16 d. Committing wire fraud and causing others to commit wire fraud for the electronic
17 payment and settlement of sold Impac RMBS Trusts issued between 2005 and 2007; and

18 e. Conspiring to engage in the actionable misconduct above.

19 **II. JURISDICTION AND VENUE**

20 35. This Court has subject matter jurisdiction over this action pursuant to 31 U.S.C.
21 § 3732(a), 28 U.S.C. § 1331, and 28 U.S.C. § 1345 because, among other things, the Impac Defendants
22 transact business in this District, and the Impac Defendants engaged in wrongdoing in this District. The
23 Court has original jurisdiction over the State law claims pursuant to 31 U.S.C. § 3732(b) because this
24 action is brought under State laws for the recovery of funds paid by the *Qui Tam* States, and it arises
25 from the same transactions or occurrences brought on behalf of the United States under 31 U.S.C.
26 § 3730.

27 36. This Court has personal jurisdiction over the Impac Defendants and venue is proper in
28 this District under 31 U.S.C. § 3732(a) and 28 U.S.C. §§ 1391(b) and (c). The Impac Defendants

1 transact business within this judicial district, and acts proscribed by 31 U.S.C. § 3729 occurred in this
2 District.

3 37. This Court has jurisdiction over all State and Municipal law claims alleged herein
4 pursuant to 28 U.S.C. § 1367 and 31 U.S.C. § 3732(b).

5 38. The causes of action alleged herein are timely brought because, among other things, of
6 efforts by the Impac Defendants to conceal from the United States, and the States and Municipalities,
7 their wrongdoing in connection with the allegations made herein.

8 **III. PARTIES**

9 **A. Plaintiff/Relator**

10 39. Relator Jeremy Calva brings this action on behalf of itself and the United States of
11 America.

12 40. Relator has direct knowledge of the conduct alleged in this Complaint and conducted an
13 independent investigation to uncover false claims submitted to the United States of America.
14 Accordingly, Relator is an "original source" of the non-public information alleged in this Complaint
15 within the meaning of 31 U.S.C. §§ 3730(e)(4)(A) and (B), and these allegations are not based upon
16 publicly disclosed allegations of the fraud alleged herein.

17 41. Relator uncovered the false and fraudulent claims that are at issue in this case by virtue of
18 its extensive experience working in RMBS securitization reviews, servicing reviews, Regulation AB
19 disclosures, obtaining non-public information provided by Impac Defendants, loan-level data analysis,
20 and loan-level delinquency reporting.

21 42. Based on its knowledge of and experience with RMBS offerings and monthly distribution
22 remittance reporting and reviewing non-public information provided by Impac, Relator found that the
23 Impac Defendants had formed these ten Trusts based on materially false information provided to the
24 SEC and all investors, including the Government Programs. Relator also uncovered evidence that the
25 Impac Defendants have continued to provide materially false information to investors up to the present
26 and are continuing to generate new false information on an ongoing monthly basis within the monthly
27 remittance reporting.

1 43. Prior to filing of the Complaint, Relator provided the Government with written disclosure
2 of substantially all material evidence and information that Relator possessed, in accordance with 31
3 U.S.C. § 3730(b)(2). Included in the materials provided to the Government were its proprietary analysis
4 and the results of its investigation into the Impac Defendants' fraudulent conduct.

5 44. Relator brings this action on its own behalf and on behalf of the United States of America
6 pursuant to 31 U.S.C. §3730(b)(1) of the federal False Claims Act, for: a) false and fraudulent conduct
7 that caused significant losses to the Federally-chartered and backed programs known as Fannie Mae and
8 Freddie Mac, which were bailed-out by the U.S. Treasury from and after September 2008, in an amount
9 in excess of \$187 billion, due to substantial losses resulting, in part, from the fraud alleged herein; b) for
10 false claims, records or statements made to Fannie Mae, Freddie Mac, the United States Treasury, the
11 NCUA, the FDIC, and federal programs including, without limitation, HAMP; c) avoidance of their
12 obligations to replace or repurchase the delinquent loans; d) avoidance of their obligation to disgorge to
13 the SEC their ill-gotten gains from the securities fraud alleged herein; and d) concealment of all of the
14 foregoing.

15 45. Relator also brings this action on its own behalf and on behalf of State and Municipal
16 Governments pursuant to analogous provisions of their respective false claims acts for false and
17 fraudulent conduct that caused significant losses to State and Municipal pension and other funds.

18 **B. Impac Defendants**

19 46. Defendant Impac Secured Assets Corp. is a California corporation with its principal place
20 of business in Irvine, California. Impac Secured Assets Corp. is the depositor and issuer for all ten (10)
21 trusts.

22 47. Defendant Impac Funding Corp. is a California corporation with its principal place of
23 business in Irvine, California. Impac Funding Corp. is the primary originator of most loans, and sponsor
24 and master servicer for all ten (10) trusts.

25 48. Defendant Impac Mortgage Holdings, Inc. is a Maryland corporation with its principal
26 place of business in Baltimore, Maryland. Impac Mortgage Holdings, Inc. oversaw and coordinated the
27 efforts of its business units to carry out the scheme alleged herein and as the disclosed party that would
28 complete a repurchase in the event the Sponsor is unable to do so.

1 49. All unlawful practices alleged in this Complaint were established and/or ratified at the
2 highest corporate levels of the Impac Defendants (or their successors) and subsidiaries and affiliates
3 owned, operated, dominated and controlled by the Impac Defendants.

4 **IV. THE FALSE CLAIMS ACT**

5 **A. The Action Is Permitted Under The False Claims Act**

6 50. To the extent certain information concerning these transactions was in the public domain,
7 Relator asserts there was no "public disclosure" of the allegations of fraud set forth herein that would
8 trigger the bar to certain actions set forth in 31 U.S.C. § 3730(e)(4). In pertinent part, the information
9 used by Relator was virtually inaccessible publicly and, even once accessed, was presented in a format
10 indecipherable to the general public, and therefore was insufficient to constitute a public disclosure of
11 the fraud alleged herein.

12 51. Even if any of the information in the public domain is found to be a public disclosure of
13 the fraud alleged herein, Relator nonetheless qualifies as "an original source" of the allegations of fraud
14 alleged herein because Relator obtained, and developed through original analysis, knowledge and
15 information independent of any public disclosure and which materially adds thereto, and/or obtained
16 direct and independent knowledge of the allegations of fraud alleged herein. In addition, prior to filing
17 this action, Relator disclosed to the Government Plaintiffs all material evidence supporting the
18 allegations of fraud herein.

19 **B. The Fraud Enforcement And Recovery Act Of 2009 ("FERA") Amendments To The**
20 **False Claims Act**

21 52. The trillion-dollar Congressional stimulus package has magnified the risk of fraud against
22 taxpayer funds and led to calls for better oversight of government contractors.⁸ Congress responded by

23 ⁸ See S. Rep. No. 111-10, at 10 (2009), reprinted in 2009 U.S.C.C.A.N. 430, 437-38 ("In
24 response to the economic crisis, the Federal Government has obligated and expended more than \$1
25 trillion in an effort to stabilize our banking system and rebuild our economy. These funds are often
26 dispensed through contracts with non-governmental entities, going to general contractors and
27 subcontractors working for the Government. Protecting these funds from fraud and abuse must be
28 among our highest priorities as we move forward with these necessary actions."); see also Michael
Cooper, *Few Cases of Fraud Involving Stimulus Money Have Been Detected, Officials Say*, N.Y. Times,
Sept. 18, 2009, at A13 (reporting on fears among government officials that stimulus money will be
targeted for fraud); Grant McCool & Martha Graybrow, *FBI Targets Fraud in TARP, Stimulus Fund*,
Reuters, June 2, 2009, available at <http://www.reuters.com/article/idUSTRE5515MF20090602> ("The
FBI has been bracing for a wave of fraud and corruption cases stemming from the government's
multitrillion-dollar effort to stimulate the economy and help ailing banks.").

1 enacting the Fraud Enforcement and Recovery Act of 2009 ("FERA").⁹ On May 20, 2009, President
2 Obama signed FERA, putting into law Congress' "clarifying amendments" to the False Claims Act
3 ("FCA"). The amendments, *inter alia*, expanded liability to requests for funds by a "contractor, grantee,
4 or other recipient, if the money or property is to be spent or used on the Government's behalf or to
5 advance a Government program or interest[.]"¹⁰ The Senate Report accompanying the bill provides
6 support for use of the revised FCA to police the extraordinary economic support the Government has
7 provided to the banking system under TARP as established by the Emergency Economic Stabilization
8 Act of 2008. The Senate Report states that the FERA's amendments to the FCA were passed in order to
9 "protect from fraud the Federal assistance and relief funds expended in response to our current economic
10 crisis."¹¹

11 53. Congress enacted section 4 of FERA, titled "Clarifications to the False Claims Act to
12 Reflect the Original Intent of the Law" to, *inter alia*, close loopholes opened by courts.¹² In particular,
13 courts had held that the FCA requires direct presentation of a false claim to the government, not just to
14 an entity using or administering government funds, and had held that false statements by a subcontractor
15 to a prime contractor must be made with the intent that the government would receive the information.¹³

16 54. Congress achieved this clarification in part by revising the technical definition of
17 "claims" to clarify that the FCA was designed to capture all fraud against government funds, whether or
18 not the government has title to the money.¹⁴ FERA amended the FCA to, in relevant part, clarify that
19

20 ⁹ Pub. L. No. 111-21, 123 Stat. 1617 (May 20, 2009).

21 ¹⁰ *Id.* at sec. 4(a).

22 ¹¹ S. Rep. No. 110-10, at 4 (Mar. 23, 2009).

23 ¹² See *Allison Engine Co. v. United States ex rel. Sanders*, 553 U.S. 662 (2008); *United States ex*
24 *rel. Totten v. Bombardier Corp.*, 380 F.3d 488 (D.C. Cir. 2004); S. Rep. No. 111-10, at 10 (2009),
25 *reprinted in* 2009 U.S.C.C.A.N. 430, 438 ("The effectiveness of the FCA has recently been undermined
26 by court decisions limiting the scope of the law and allowing subcontractors and non-governmental
entities to escape responsibility for proven frauds. In order to respond to these decisions, certain
provisions of the FCA must be corrected and clarified in order to protect the Federal assistance and
relief funds expended in response to our current economic crisis."); see also *id.* at 10-12 (discussing the
impact of *Allison Engine*, *Totten*, and *United States ex rel. DRC, Inc. v. Custer Battles, LLC*, 376 F.
Supp. 2d 617 (E.D. Va. 2006), on FCA liability for subcontractors and grantees).

27 ¹³ S. Rep. No. 111-10, at 10-12 (explaining that the FERA amendments were intended to
overrule *Totten* and *Allison Engine*).

28 ¹⁴ See, e.g., *id.* at 11 ("[T]his bill includes a clarification to the definition of the term 'claim' in
new Section 3729(b)(2)(A) and attaches FCA liability to knowingly false requests or demands for

1 an actionable "claim" under the FCA includes "any request or demand ... for money ... that is made to a
2 contractor, grantee, or other recipient, if the money ... is to be spent or used on the Government's behalf
3 or to advance a Government program or interest, and if the United States Government provides or has
4 provided any portion of the money ... requested or demanded, or will reimburse ... any portion of the
5 money." 31 U.S.C. § 3729(b)(2)(A)(ii)(I)-(II).

6 55. FERA expressly made the FCA applicable to Fannie Mae and Freddie Mac,
7 notwithstanding their status in recent decades as federally-chartered Government Sponsored Entities
8 ("GSE") because they also relied on significant federal funding to carry out their mission of purchasing
9 mortgages as a means of ensuring liquidity, stability, and affordability in the U.S. housing and mortgage
10 loan markets. Moreover, the amendments were made against the backdrop that, from and after
11 September 2008, the United States Treasury has placed both entities in conservatorship and infused over
12 \$187 billion to cover losses such as the billions of dollars caused by the misconduct alleged herein.

13 56. The FERA amendments were intended to be retroactive. Representative Howard Berman
14 directly addressed the retroactivity of the FERA amendments, stating: "We intend for the definition of
15 ['claim'] also to apply to all False Claims Act claims pending on or after June 7, 2008, as that definition
16 is an intrinsic part of amended Section 3729(a)(1)(B). The purpose of this amendment is to avoid the
17 extensive litigation over whether the amendments apply retroactively, as occurred following the
18 1986 False Claims Act amendments."¹⁵

19 57. To plead a cause of action under the amended 31 U.S.C. § 3729(a)(1)(A), a complaint
20 must allege that the defendant (1) made, or caused to be made, a claim, (2) that was false or fraudulent,
21 (3) knowing of its falsity. *See* 31 U.S.C. § 3729(a)(1)(A). A cause of action under the new 31 U.S.C.
22 § 3729(a)(1)(B) requires that the defendant (1) made, used, or caused to be made or used, a statement,
23 (2) that was knowingly false or fraudulent, and (3) that was material to a false or fraudulent claim.¹⁶

24
25 money and property from the U.S. Government, without regard to whether the United States holds title
26 to the funds under its administration.").

27 ¹⁵ 155 Cong. Rec. E1300 (daily ed. June 3, 2009) (statement of Rep. Berman); *see also* Matthew
Titolo, *Retroactivity and the Fraud Enforcement and Recovery Act of 2009*, 86 Ind. L.J. 257 (2011).

28 ¹⁶ *See* 31 U.S.C. § 3729(a)(1)(B); *United States ex rel. Feldman v. City of New York*, 808 F.
Supp. 2d 641, 655-56 (S.D.N.Y. 2011).

1 58. The “knowledge” element of the FCA is defined as (1) “deliberate ignorance of the
2 truth or falsity of the information” provided, or (2) “reckless disregard of the truth or falsity of the
3 information” provided to the Government. 31 U.S.C. § 3729(b)(1).

4 59. This Complaint alleges that the federal government provides, or has provided, or will
5 reimburse a portion of the money claimed for the Trust securities sold to the Government Programs. 31
6 U.S.C. § 3729(b)(2)(A). Specifically, with regard to the 2006-07 sales of the RMBS certificates,
7 both Fannie Mae and Freddie Mac purchased the Securities while fulfilling their charters as GSEs to
8 provide liquidity to the residential mortgage market. Fannie Mae and Freddie Mac have been under the
9 conservatorship of the FHFA since September 2008, and have received quarterly capital contributions
10 from the Treasury totaling more than \$187 billion, which covered the losses caused to Fannie Mae
11 and Freddie Mac from the Impac Defendants’ misrepresentations of delinquency rates at the time
12 the Trust Certificates were issued.

13 60. Each GSE has thus been a “recipient” of Government money. 31 U.S.C.
14 § 3729(b)(2)(A)(ii). The Treasury also has provided these GSEs billions of dollars “to advance a
15 Government program or interest,” – namely, to provide liquidity, stability and affordability to the
16 United States housing and mortgage markets, and to prevent disruptions in the availability of
17 mortgage finance. In advancing this interest, the GSEs used federal money to, among other things,
18 cover the massive losses incurred as a result of the failed Impac Trusts. *Id.* The Government thus has
19 provided, or reimbursed the GSEs for, at least a portion of the money associated with Trust losses.
20 *See id.* 3729(b)(2)(A)(ii)(I).

21 61. The FERA amendments were intended to combat the very kind of fraud perpetrated by
22 Impac as alleged herein. FERA extended FCA liability to, among other things, claims made to recipients
23 of federal funds for the purpose of “improv[ing] enforcement of mortgage fraud, securities fraud,
24 financial institution fraud, and other frauds related to federal assistance and relief programs, [and] for
25 the recovery of funds lost to these frauds.”¹⁷ As the Senate Report stated, the purpose of FERA was,

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27 ¹⁷ *See* S. Rep. No. 111-10, 111th Cong. 1st Sess. 10, 2009 U.S.C.C.A.N. 430, 433 (March 23,
28 2009) (the “Senate Report”) (“The False Claims Act must be corrected and clarified in order to
protect from fraud the Federal assistance and relief funds expended in response to our current
economic crisis.”).

1 among other things, to “reinvigorate [] anti-fraud measures and give law enforcement agencies the
2 tools and resources they need to root out fraud so that it can never again place our financial system
3 at risk.”¹⁸

4 62. Additionally the NCUA as the insurer and regulator took over and covered the losses of
5 four corporate credit unions that purchased these defective securities. Losses to the NCUA share
6 insurance fund for the ten Impac Trusts have exceeded \$282 million.

7 63. As to the States and Municipalities, the Complaint alleges that State and Municipal
8 pension funds purchased the securities using State and Municipal funds.

9 **V. BACKGROUND**

10 **A. Introduction To Residential Mortgage-Backed Securities**

11 1. *Asset-Backed Securities (ABS)*

12 64. Asset-backed securitization is a financing technique in which financial assets, in many
13 cases themselves less liquid, are gathered into discrete pools and converted into instruments that may be
14 offered and sold in the capital markets. These instruments are commonly called “asset-backed
15 securities,” or “ABS.”

16 65. In a basic ABS securitization structure, an entity—often a financial institution and
17 commonly known as a “sponsor”—originates or otherwise acquires a pool of financial assets, such as
18 mortgage loans, either directly or through an affiliate. It then sells the financial assets, again either
19 directly or through an affiliate, to a specially created investment vehicle that issues securities “backed”
20 or supported by those financial assets. The structure of asset-backed securities is intended, among other
21 things, to insulate ABS investors from the corporate credit risk of the sponsor that originated or acquired
22 the financial assets.

23 66. Payments on an asset-backed security depend primarily on the cash flows generated by
24 the assets in the underlying pool and other rights designed to assure timely payment, such as liquidity
25 facilities, guarantees or other features generally known as credit enhancements.

26
27
28 ¹⁸ *Id.* at 431.

2. *Residential Mortgage-Backed Securities (RMBS)*

67. One type of ABS involves residential mortgages. The certificates issued pursuant to the pooling of such mortgages are called RMBS. A pool of residential mortgages can only be securitized into an RMBS according to strict laws designed to ensure the integrity of the markets for such financial products. Before detailing the RMBS disclosure requirements, however, it is essential to understand the various players and documents involved in an RMBS securitization.

68. The RMBS securitization process begins when an investment bank or similar entity—usually called a “seller” or “sponsor” (“Sponsor”)—aggregates and takes title to a number of mortgage loans, either because it originated the loans or because it purchased them from various other originators or sellers. The Sponsor then sells a pool of these mortgage loans to a “purchaser” or “depositor” (“Depositor”) pursuant to an agreement that is commonly called an Assignment and Assumption Agreement (“AAA”) or a Mortgage Loan Purchase Agreement (“MLPA”). In the AAA or MLPA, the Sponsor makes certain representations and warranties. After the sale, the Sponsor remains in the picture as the Sponsor of the Trust which is detailed below.

69. After having taken title to the pool of mortgages, the Depositor conveys the pool of loans to a newly created and separately named RMBS trust. This transfer is achieved through a Pooling and Servicing Agreement (“PSA”) wherein the Depositor assigns to the newly-created trust all of its right, title, and interest in the mortgage loans, as well as all future proceeds from the loans (whether monthly payments or liquidation). In order to ensure collection of the loan payments and liquidation proceeds, the Sponsor contracts with an entity known as a loan servicer (hereafter “Servicer”) to administer the loans and to regularly provide information back to the Trust relating to the status of the loans in the pool. In certain case a master servicer oversees the servicer’s actions and activities.

70. The Depositor and Sponsor then act as the registrant/issuer for new securities, known as “RMBS Certificates,” backed by the pool assets of the trust. During this process, the registrants must satisfy various requirements to legitimize their securitization, including, among other things, representations required by the SEC with regard to various criteria that must be met to make the certificates eligible for Shelf Registration. Such representations are made in a document called the Prospectus Supplement. In many instances, the Prospectus Supplement is accompanied by additional

1 documents, called Free Writing Prospectuses (“FWPs”), which provide in some cases loan-level data for
2 loans to be included in the pool.

3 71. The RMBS Certificates are then purchased at a discount to the projected sales price by
4 one or more entities known as underwriters (“Underwriters”), which then sell the securities for full
5 market value to investors, including, as here, various Government Investors.

6 72. The Underwriters also bear responsibility for performing due diligence with respect to the
7 trust transaction (and are included in and share responsibility for confirming the accuracy of the
8 representations made in the issuing documents for the corresponding Trust).

9 **B. Delinquency Reporting Requirements For RMBS Securitization**

10 73. When investors invest in any RMBS deal, the integrity of the loans that comprise the
11 underlying collateral is critical. This is because investors must be able to assess the likelihood that the
12 borrowers will be able to repay their mortgage debts and thus maintain the investors’ ability to profit
13 from the security.

14 74. While a variety of factors can figure into loan integrity (including, for example, the
15 veracity of the loan origination papers, the creditworthiness of the borrowers, the borrowers’ equity
16 stakes, and the degree to which the originators of the loans adhered to the applicable loan underwriting
17 guidelines), one of the most important metrics is both simple and objective: loan payment status. If the
18 borrowers are not paying their debts on time—or at all—the burden and relative weight of the other
19 factors are rendered largely academic.

20 75. Investors—including Government Programs—are not interested in taking on the
21 significantly increased risk of default that comes with loans that are not being paid on time. Instead they
22 prefer that such delinquent loans be largely absent from any initial RMBS pool. By and large, the SEC
23 has sought to satisfy investor concerns in this respect by requiring specific disclosures related to the
24 payment status of the loans in an asset-backed pool.

25 76. Thus, a pool of residential mortgages can only be securitized according to a number of
26 strict laws designed to ensure the integrity of the markets for such instruments. One of the core
27 requirements, relevant here, is full and accurate disclosure of the percentage of the aggregate value of
28

1 the pooled loans being placed into the Trust that are delinquent as of the so-called "Cut-Off Date" for
2 creation of the Trust.

3 77. The "Cut-Off Date" is the date on which the loans are first considered to be a part of the
4 trust pool and the date after which all monies received related to these loans will become property of the
5 trust. This date is highlighted in the Prospectus Supplement for each trust, and is the date for which the
6 delinquency percentages for loans in the trust pool are required to be measured.

7 78. The paid-to date describing a loan's delinquency status is a measurement that can change
8 for any loan on a month-to-month basis. A loan that might be delinquent for one month may be non-
9 delinquent in a later month if the borrower on that loan has made up for earlier payments that had not
10 previously been sent. Conversely, a loan that is delinquent one month may persist as a delinquent loan
11 (and may even become more delinquent) as subsequent payments are made later and/or not at all. And
12 loans that had never before been delinquent may become delinquent if the borrower fails to make timely
13 payments. While any one-delinquency snapshot cannot predict how loans are going to be viewed month-
14 to-month, that snapshot can indicate potential weakness in the loans within a pool. If borrowers are not
15 making their payments on time, this is a red flag to investors.

16 79. Asset-Backed Securities, including RMBS, are subject to an SEC-promulgated regulation
17 called "Reg AB" (where "AB" refers to "asset-backed"). *See* 17 CFR Part 229, Subpart 229.1100 *et seq.*
18 The SEC promulgated the final regulations in 2005.¹⁹ With only a few exceptions, Reg AB went into
19 full effect at the beginning of 2006, and the SEC itself has confirmed that Reg AB essentially echoed
20 established standards that had, for the most part, already been in place for many years. While this
21 regulation covers multiple aspects of how asset-backed securities should be securitized, the portions that
22 deal with delinquency disclosures are relevant here.

23 80. The SEC has long required that asset-backed securities accurately report the underlying
24 asset delinquencies. With regard to delinquencies, the Commission noted that "[s]uch assets may no
25 longer be ... converting into cash within a finite time period, as required by the definition of asset-
26 backed security, given that such assets are not performing in accordance with their terms and
27

28 ¹⁹ *See* "Asset-Backed Securities," 70 Fed. Reg. 1506 (January 7, 2005) (effective January 1, 2005, for all asset-backed securities that are the subject of that registered offering).

1 management or other action may be needed to convert them to cash.... We believe the principle that the
2 ABS should be primarily dependent on a pool of assets that self-liquidate instead of on the ability of the
3 entity performing collection services is an important principle that should be retained. Further, we
4 believe the conditions we are codifying regarding delinquent and non-performing assets ... are
5 appropriate in achieving this principle.”²⁰

6 81. Reg AB adopted two standards to govern delinquencies in asset-backed securities.²¹

7 a. For offerings that could be registered on a non-shelf basis, Reg AB required that
8 “delinquent assets may not constitute 50% or more, as measured by dollar volume, of the asset
9 pool as of the measurement date described above.”²²

10 b. For shelf registration eligibility, the SEC retained “the existing 20% delinquency
11 concentration level in the no-action letter, as proposed.”

12 82. Reg AB defines a pool asset as “delinquent” if any portion of a contractually required
13 payment on the asset is 30 days or more past due from the contractual due date, as determined in
14 accordance with the most restrictive of any of the following:²³

15 a. The transaction agreements for the asset-backed securities;

16 b. The delinquency recognition policies of the sponsor, any affiliate of the sponsor
17 that originated the pool asset or the servicer of the pool asset; or

18 c. The delinquency recognition policies applicable to such pool asset established by
19 the primary safety and soundness regulator of any entity listed above or the program or
20 regulatory entity that oversees the program under which the pool asset was originated.

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23 ²⁰ *Id.* at 1517.

24 ²¹ *Id.* at 1518.

25 ²² *Id.* According to the Commission, “concentrations above that threshold begin to raise serious
26 doubt that the transaction should be characterized as an “asset backed security” as the payments on the
27 securities in such transactions would appear to depend more on the ability of the entity or entities that
28 provide collection services for the delinquent assets than on the self-liquidating nature of the underlying
assets.”

²³ *Id.* at 1518.

1 83. In adopting delinquency limits, the SEC adopted policies regarding grace periods, re-
2 aging, restructures, partial payments considered current or other such practices on delinquencies.

3 84. Reg AB called for the presentation of historical information and data on delinquencies
4 and loss information. In providing such information, Sponsors were required to:²⁴

5 a. Present delinquency experience in 30 or 31-day increments, as applicable,
6 beginning at least with assets that are 30 or 31 days delinquent, as applicable, through the point
7 that assets are written off or charged off as uncollectable. At a minimum, such information must
8 be presented by number of accounts and dollar amount;

9 b. Disclose the total amount of delinquent assets as a percentage of the aggregate
10 asset pool;

11 c. Present loss and cumulative loss information, as applicable, regarding charge-offs,
12 charge-off rate, gross losses, recoveries and net losses (with a description of how these terms are
13 defined), the number and amount of assets experiencing a loss and the number and amount of
14 assets with a recovery, the ratio of aggregate net losses to average portfolio balance and the
15 average of net loss on all assets that have experienced a net loss;

16 d. Categorize all delinquency and loss information by pool asset type;

17 e. In a registration statement under the Securities Act or the Exchange Act or in a
18 prospectus to be filed pursuant to § 230.424, describe how delinquencies, charge-offs and
19 uncollectable accounts are defined or determined, addressing the effect of any grace period, re-
20 aging, restructure, partial payments considered current or other practices on delinquency and loss
21 experience; and

22 f. Describe any other material information regarding delinquencies and losses
23 particular to the pool asset type(s), such as repossession information, foreclosure information
24 and real estate owned (REO) or similar information.

25 85. Critical to the allegations herein, the SEC also mandated that the delinquency disclosures
26 be made as of "the designated Cut-Off date for the transaction (i.e., the date on and after which
27

28 ²⁴ 70 Fed. Reg. at 1598.

1 collections on the pool assets accrue for the benefit of asset-backed security holders).²⁵ Such date is
2 referred to in this complaint as the “Cut-Off Date” [capitalized] to distinguish it from the cut-off date
3 [not capitalized] used for monthly remittance reports issued during the life of the Trust, which are
4 discussed *infra*.

5 86. Thus, pursuant to their creation of the Trusts, the Impac Defendants were required, under
6 applicable SEC laws and regulations, to disclose the percentage of underlying pool assets, by aggregate
7 principal balance, that were delinquent as of each Trust’s “Cut-Off Date.” The disclosed delinquency
8 rates were required to be less than 50% in order to qualify as “asset-backed” securities, and less than
9 20% in order to qualify as “investment quality” securities entitled to Shelf Registration. Of course, the
10 disclosed delinquency rates were also material to the risk rating assigned to the securities and the
11 corresponding market price for the securities.

12 87. The Cut-Off Date disclosures are generally provided in the Prospectus Supplement,
13 publicly filed with the SEC as part of the securitization process. This Prospectus Supplement disclosure
14 is often worded in terms of the percentage of loans in the pool that were “delinquent” as of the Cut-Off
15 Date (*e.g.*, “delinquent,” “30 days or more delinquent,” “more than 30 days delinquent,” “30-59 days
16 delinquent,” etc.).

17 88. In most instances, the criteria for loans being “delinquent” and/or “30 days delinquent”
18 are specifically defined in the Prospectus Supplement. In the absence of such definitions, they take their
19 ordinary meaning.

20 89. Whatever the delinquency definitions, however, these particular Prospectus Supplement
21 “delinquency” disclosures are still required to comport with Reg AB, which mandates, among other
22 things, that RMBS Issuers disclose an appropriate method of determining loan delinquency and disclose
23 the amount of total assets (as a percentage of the aggregate pool) that are delinquent as of the transaction
24 Cut-Off Date. *See* Reg AB Items 1100(b), 1105(a) & 1111(c).

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²⁵ 70 Fed. Reg. at 1601.

1 90. Specifically, Reg AB (and Item 1101(d)) required that delinquency (*i.e.*, whether a
2 payment was late by more than a month from its date due) could be calculated no more expansively than
3 the policies established by the OTS.

4 91. As a preliminary matter, there are two generally utilized methodologies for calculating
5 loan delinquencies for mortgage-backed securities, one articulated by the Mortgage Bankers Association
6 of America (the “MBA method”) and one articulated by the OTS²⁶ (the “OTS method”). Under the more
7 restrictive MBA method (usually reserved for prime loans), a loan is considered “delinquent” as to status
8 at the close of business on the day that a single scheduled payment has been missed, and considered 30
9 days delinquent as to tier on the last day before the next payment is due. The OTS method (usually used
10 for subprime loans) is slightly more forgiving: a loan under the OTS method is not deemed “delinquent”
11 until the next monthly payment has also been missed, at which time it is considered “delinquent” as to
12 status and “30 days delinquent” as to tier.²⁷ Both methodologies are acceptable under Reg AB, but, as a
13 practical matter, Reg AB effectively prohibits the use of any delinquency methodology less restrictive
14 than that set forth by OTS (*i.e.*, one that would capture and identify even less delinquencies).²⁸

15 92. As noted above, under OTS methodology, a loan becomes “delinquent” (and specifically,
16 “30 days delinquent”) if its scheduled payment remains unpaid as of the next monthly due date. Hence,
17 OTS methodology is slightly more forgiving than MBA methodology, where a loan becomes

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19 ²⁶ Effective July 21, 2011, the OTS merged into the Office of the Comptroller of the Currency
20 (“OCC”).

21 ²⁷ See 11/16/12 Complaint: *SEC v. JPMorgan et al.* at ¶ 64 (“Under the OTS method, a mortgage
22 loan was thirty days delinquent if payment due on a due date in one month was not received by the close
23 of business on the loan’s due date in the following month. Under the MBA method, that mortgage loan
24 was thirty days delinquent if payment was not received by the close of business on the immediately
25 preceding day. As an example, if a loan had a payment due date of November 1, that loan would be
26 thirty days delinquent under the OTS method if the payment was not received by the close of business
27 on December 1. Under the MBA method, however, that loan would be thirty days delinquent if payment
28 was not received by the close of business on November 30.”).
(<http://www.sec.gov/litigation/complaints/2012/comp-pr2012-233.pdf>)

²⁸ In most instances, OTS was either the primary safety and soundness regulator for one or more
of the entities that were issuing/underwriting the residential mortgage backed securities or the regulatory
entity overseeing the program under which at least some of the mortgage pool assets were originated.
And, even in those rare cases in which it was neither, no other regulatory entities overseeing the
origination of mortgage loans or the securitization of mortgage pools had ever recognized the acceptable
use of any delinquency methodology for subprime loans that was less restrictive than that articulated by
OTS.

1 “delinquent” the day a payment is missed, and is classified in the “30 days delinquent” tier if its
2 scheduled payment remains unpaid as of the day *before* the next monthly due date.

3 93. Depending on the day of the month on which delinquency status is determined, there can
4 be significant differences in the number of loans considered “30 days delinquent” at any given time
5 under the two methodologies. However, in the RMBS deals at issue here, delinquency was to be
6 determined “as of” a Cut-Off Date on the first of the month. Therefore, but for the Impac Defendants’
7 fraud, application of either methodology should have yielded the same result.

8 94. In the present case, the Impac Defendants falsified the Cut-Off Date mortgage loan
9 schedules and designed a non-Reg AB and non-OTS method to mask its manipulation of the underlying
10 data so as to improperly shift the loans to the next most favorable delinquency tier for all monthly
11 remittance reporting. Impac’s alterations of paid-to dates in the Cut-Off Date mortgage loan schedule
12 and home-cooked method for monthly reporting were impermissibly more lenient than the OTS method,
13 and therefore violated Regulation AB.

14 **C. Ongoing Distribution Remittance Reporting For RMBS Trusts**

15 95. Each month, the Issuer publishes a Remittance Report summarizing the payments
16 received on the loans in the Trust pool, thereby providing a vehicle for assessing changes in the pool’s
17 delinquency percentage. Remittance Reports historically report the delinquency status of the loans as of
18 the end of the previous month (*e.g.*, a remittance report issued in July reports on loan delinquency status
19 as of the end of June). As noted above, vastly different percentages of loans in a given pool will be
20 reported as “delinquent” depending on whether the MBA or OTS methodology is used, and for subprime
21 securities Issuers always used the more lenient OTS method.

22 96. By way of example, consider a loan having payments due on the first of each month.
23 Assume that the borrower on that mortgage loan misses the June 1 payment and has not made any
24 payment by close of business on the last day of the month. Under the MBA methodology, that loan
25 would be categorized in the July report as “30 days delinquent.” Under the OTS methodology, however,
26 that loan would be considered less than 30 days delinquent. Only if the borrower makes no payment by
27 the end of July would the OTS methodology allow the loan to be reported (in the August report) as “30
28 days delinquent.” This is not to say that the loan did not become “30 days delinquent” as of July 1 – it

indeed did. But such delinquency would not be assessed or reported until the end of July (and even then only if it is not further deferred by a late payment interposed between July 2 and July 31) for a month end report Cut-Off date.

97. The Impac Defendants constructed a monthly reporting structure for all remittance reporting which violated Reg AB and did not conform to the OTS method. Delinquency was measured and reported as of the last day of the prior month, while the servicer's file was as of the 14th day of the current month for all monthly remittance reporting. The OTS method and Reg AB require the measurement date for delinquency be the monthly files' effective day, the 14th of the month. This home-cooked method covered up original delinquency misrepresentations and prevented investors, including government investors, from detecting the original and ongoing false statements and reporting.

D. The Impac Defendants' Motive And Opportunity To Engage In The Alleged Scheme

1. 2005-2007: Late Payments Begin To Imperil Residential Mortgage Pool Securitization

98. The Impac Defendants had both the motive and the opportunity to undertake the fraudulent scheme alleged herein, which spring from the confluence of two events. First, and as detailed below, the 2006 onset of mandatory compliance with Reg AB for the Cut-Off Date delinquency disclosure was at odds with the Impac Defendants' desires to continue using other methodologies that slightly masked the delinquency rates when publishing subsequent monthly reports during the life of the securities. Second, at the same time the mounting financial crisis was resulting in higher delinquency rates, in response to which investment banks were trying frantically to securitize and off-load their loans to Government Programs so they wouldn't be stuck holding bad loans.

99. In the 2005-2007 time period, the private-label RMBS market was moving at full tilt. RMBS Issuers were aggregating mortgage loans and selling pool securities as fast as they possibly could. The pressure to rapidly securitize these billions of dollars of loans, however, was driven not only by profit motive, but also by an ever-growing realization that the mortgage market was unsustainable. Loan turnover was high, underwriting guidelines were becoming ever more lax, and an alarming number of mortgagors were no longer making their payments on time.

1 100. With the inexorable advance toward an end-of-days scenario, Issuers like Impac were, in
2 essence, playing a high stakes game of “musical chairs.” Before the music stopped, they needed to make
3 these loans someone else’s problem as soon as practicable. While they sought to remove as many
4 securitization hurdles as they could, these RMBS Issuers were hobbled by at least two things: a) the Reg
5 AB requirements (or, in 2005, its analogous precursors) that Issuers reveal, as of the Cut-Off Date, the
6 30 day delinquency status of the loans in the mortgage pool to be securitized; and b) their own
7 longstanding practice of providing Closing Date representations and warranties that rely in part on loan
8 payment status.

9 101. Hence, ignoring the Reg AB requirements when reporting Cut-Off Date delinquencies as
10 well as the Closing Date no-default provision became the strategy for off-loading these toxic securities
11 to investors (including the Government Programs) as quickly as possible.

12 102. From the Impac Defendants’ perspective, the “problem” with RMBS securitization was
13 that the pooled loans were not being packaged and securitized as of the end of the month, but as of the
14 first day of the month. Hence, with the transaction “Cut-Off Date” being the first of the month and with
15 a clear Reg AB requirement to report delinquency status *as of* that Cut-Off Date, proper application of
16 the MBA and OTS methods would yield essentially the same delinquency percentages for all loans due
17 on the first of the month. But for the later Remittance Reports, which often purported to measure
18 delinquencies as of the end of the prior month (yet another violation of Reg AB, as detailed in the
19 previous section), the MBA and OTS methods would still yield different results, and therefore the
20 Issuers wanted to continue using the more lenient OTS method which made the loan pools appear less
21 delinquent on an ongoing basis.

22 103. On a practical level, to Issuers this meant that (if they reported Cut-Off Date
23 delinquencies in compliance with Reg AB) the OTS “30 day delinquencies” that would normally either
24 remain hidden until the end of the month or be perpetually masked by later catch-up payments would
25 instead be laid bare – providing investors (including Government Programs), and federal regulators like
26 the SEC, insight into the true nature of the underlying mortgage pools and threatening the Issuers’
27 ability to offload these loans at all, much less to command an unwarranted premium for securities based
28 on these loans.

1 104. To illustrate the point, consider a loan originated in April 2006, with the first payment
2 due on June 1, and which was pooled into a RMBS trust with a July 1 Cut-Off Date. Assume that as of
3 the close of business on July 1 the borrower had failed to pay both the June 1 and July 1 payments.
4 Under the MBA method, the loan would be reported in the 30-day delinquent tier from and after June
5 30th, and hence it would make no difference whether the Trust Cut-Off Date was June 30th or June 1st.
6 In contrast, when using the OTS method, if the Cut-Off Date is June 30th the loan would not be reported
7 in the 30-day delinquency tier, but would be reported in that tier if the Cut-Off Date is July 1. Hence,
8 following Reg AB and properly applying the OTS method would have revealed the high delinquency
9 rates of bad loans they were trying to securitize and off-load to investors, including the Government
10 Programs. Compounding the situation was the Impac Defendants' need to continue masking the high
11 delinquency rates during the life of the Certificates by issuing monthly remittance reports measuring
12 delinquency rates "as of" the end of the prior month (even though now also prohibited by Reg AB).

13 105. The Impac Defendants' solution was to ignore Reg AB and conceal the fact its Cut-Off
14 Date delinquency rates were based on the status of the loans the day *before* the Cut-Off Date.

15 106. In short, the Impac Defendants reported initial Cut-Off Date delinquencies in a manner
16 inconsistent with accepted delinquency recognition methodology, and continued the deception through
17 their end-of-the-month Remittance Report methodology, which not only carried through with the
18 improper methodology, but, in addition, also backdated later payments to hide delinquencies even more.

19 107. By ignoring Reg AB when reporting the Cut-Off Date delinquencies, the Impac
20 Defendants hid the instability of the loans in the pools they sought to securitize. Under their
21 methodology, rather than a loan becoming "delinquent" (and specifically, "30 days delinquent") when
22 the second *consecutive* payment is missed, a loan was not considered "30 days delinquent" until the
23 borrower missed the second *subsequent* payment *after* an initial missed payment—*i.e.*, the third missed
24 payment). In other words, the Impac Defendants deceptively shifted all delinquent loans up to the next
25 more favorable tier. Although Issuers sometimes varied in the descriptions of their methodology and
26 how they presented the data, the descriptions were false and misleading smokescreens masking the fact
27 the Issuer was actually ignoring Reg AB and the OTS method.

28

1 2. *The Impac Defendants Continue To Represent And Warrant That "No Untrue*
2 *Statements" Were Or Are Being Made.*

3 108. From the outset of these transactions until the present time, the Impac Defendants
4 repeatedly (both falsely and deceptively) misrepresented that they have made "no untrue statements."
5 Set forth below are illustrative examples taken from the Impac 2007-2 Trust. Substantially the same
6 certifications and/or misrepresentations were also made by the Impac Defendants with respect to each of
7 the other 10 Trusts.

8 109. *First*, in Exhibit L-1 to the Impac 2007-2 Trust's PSA, filed with the SEC and made
9 available to prospective investors, including the Government Programs, the Impac Defendants falsely
10 and deceptively represented that they would undertake to certify certain material facts, when they had no
11 present intention of making truthful certifications. The certifications the Impac Defendants undertook to
12 make, and later did falsely and fraudulently make, were as follows (underlined emphasis added):

13 FORM OF CERTIFICATION TO BE

14 PROVIDED WITH FORM 10-K

15 Re: Impac Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2007-1, issued
16 pursuant to the Pooling and Servicing Agreement, dated as of February 1, 2007, among Impac
17 Secured Assets Corporation, as Depositor, Impac Funding Corporation as the Sponsor and
18 Master Servicer, Deutsche National Trust Company, as Trustee.

19 I, Mario Fegan, certify that:

20 1. I have reviewed this report on Form 10-K and all reports on Form 10-D required to be filed
21 in respect of the period covered by this report on Form 10-K of Impac Secured Assets Trust
22 2007-1 (the "Exchange Act periodic reports");

23 2. Based on my knowledge, the Exchange Act periodic reports, taken as a whole, do not contain
24 any untrue statement of a material fact or omit to state a material fact necessary to make the
25 statements made, in light of the circumstances under which such statements were made, not
26 misleading as of the last day of the period covered by this Report;

1 3. Based on my knowledge, all of the distribution, servicing and other information required to
2 be provided under Form 10-D for the period covered by this report is included in the Exchange
3 Act periodic reports;

4 4. I am responsible for reviewing the activities performed by the servicers and based on my
5 knowledge and the compliance reviews conducted in preparing the servicer compliance
6 statements required in this report under Item 1123 of Regulation AB, and except as disclosed in
7 the Exchange Act periodic reports, the servicers have fulfilled their obligations under the
8 servicing agreements; and Based on my knowledge and the servicer compliance statements
9 required in this report under Item 1123 of Regulation AB, and except as disclosed in the
10 Exchange Act periodic reports the servicers have fulfilled their obligations under the servicing
11 agreements; and

12 5. All of the reports on assessment of compliance with servicing criteria for asset-backed
13 securities and their related attestation reports on assessment of compliance with servicing
14 criteria for asset-backed securities required to be included in this report in accordance with Item
15 1122 of Regulation AB and Exchange Act Rules 13a-18 and 15d-18 have been included as an
16 exhibit to this report, except as otherwise disclosed in this report. Any material instances of
17 noncompliance described in such reports have been disclosed in this report on Form 10-K.

18 In giving the certifications above, I have reasonably relied on information provided to me by the
19 following unaffiliated parties, Countrywide Financial Corporation and Deutsche Bank National
20 Trust Company.

21 Date: 3/28/08

22 /S/ Mario Fegan

23 Mario Fegan

24 Senior Officer in Charge of the

25 Servicing Function of the Master Servicer

26 110. For each of the Trusts, the Impac Defendants filed at least one Form 10-K and/or Form
27 10-D containing a signed certification in substantially the same form as the foregoing example, which
28 was knowingly false or fraudulent when made.

111. *Second*, in Exhibit L-1 to the Impac 2007-2 Trust's PSA, filed with the SEC and made available to prospective investors, including the Government Programs, the Impac Defendants falsely and fraudulently represented in Section 3.25(b)(iii) of the PSA ("Exchange Act Reporting"), "Form 10-K certification in the form attached hereto as Exhibit L-1 (the "Certification")" would be "signed by the senior officer of the Depositor in charge of securitization." The form was signed by Mario Fegan, Senior Officer in Charge of the Servicing Function of the Master Servicer and not the senior officer of the Depositor in charge of securitization.

112. *Third*, within their 10-K filing for the Impac 2007-2 Trust's PSA, the Impac Defendants falsely and fraudulently allowed the following disclosures to be included within the 10-K filing which they knew were untrue based on the delinquency measurement on a date other than the monthly remittance file data's effective date:

a. "KPMG LLP, a registered public accounting firm, has issued an attestation report with respect to the management's assertion of compliance with the Applicable Servicing Criteria as of and for the Period."

b. "In our opinion, except for the material noncompliance described in the third paragraph, management's assertion that the Company complied with the aforementioned servicing criteria as of and for the year ended December 31, 2007 for the Platform is fairly stated, in all material respects. /s/ Ernst & Young LLP".

113. For each of the Trusts, the Impac Defendants filed at least one Form 10-K containing a signed certification they made or caused to be made from the Master Servicer, Servicer and Depositor in substantially the same form as the foregoing example, which was knowingly false or fraudulent when made.

114. *Fourth*, the Prospectus Supplement disclosed, "The current and historical delinquency disclosure included in this prospectus supplement regarding the mortgage loans, the representation of the sponsor with respect to the delinquency status of the mortgage loans and the static pool information of the sponsor utilizes the OTS Method except as provided in 'Static Pool Information' in this prospectus supplement. In addition, delinquency information included in reports to certificateholders and delinquencies for purposes of the trigger tests described in this prospectus supplement will use the OTS

1 Method. See 'The Mortgage Pool - Methods of Delinquency Calculation' in the prospectus." The Cut-
2 Off Date and monthly remittance reports did not use the OTS method and were in violation of Reg AB.

3 115. *Fifth*, while Section 4.02(a)(xi) of the PSA discloses delinquencies will be reported as of
4 the end of the calendar month prior to such Distribution Date, it failed to disclose the effective date of
5 the file used for such measurement was the day prior to the Determination Date. The PSA thus failed to
6 disclose this non-compliant Reg AB and non-OTS method for measuring and reporting delinquencies.

7 116. *Sixth*, the PSA defined "Delinquent" as: "The delinquency method used for calculations
8 with respect to the mortgage loans will be in accordance with the methodology used by lenders regulated
9 by the Office of Thrift Supervision. Under this method, a mortgage loan is considered "30 days or more
10 Delinquent" if the borrower fails to make a scheduled payment prior to the close of business on the
11 mortgage loan's first succeeding due date. A mortgage loan would be considered "60 days or more
12 delinquent" with respect to such scheduled payment if such scheduled payment were not made prior to
13 the close of business on the mortgage loan's second succeeding due date. Similarly for "90 days or more
14 delinquent" and so on. Unless otherwise specified, with respect to any date of determination,
15 determinations of delinquency are made as of the last day of the prior calendar month. Mortgage Loans
16 with Due Dates which are not the first of the month are treated as if the Due Date was the first of the
17 following month." While this definition is OTS and Reg AB compliant, the method utilized for the Cut-
18 Off Date and monthly remittance reporting to investors was in fact not Reg AB compliant and was more
19 lenient than the OTS method.

20 a. The method utilized for monthly reporting utilized a file from the day prior to the
21 Determination Date and measured the file as if it had been received 14 days prior to that date.
22 This non-compliant method of reporting delinquencies dramatically understated loan-level
23 delinquencies and delinquency severities.

24 b. The Cut-Off Date delinquency disclosures appear to be based on falsified
25 mortgage loan schedules. Four of the ten trusts which did include a mortgage loan schedule
26 within an SEC filing included false and more favorable paid-to dates as of the Cut-Off Date,
27 which supported the false delinquency disclosures within the Prospectus Supplement.
28

1 117. *Seventh*, when making monthly Remittance Reports for each of the Trusts from 2006 to
2 the present day, the Impac Defendants made or caused to be made similar signed certifications and/or
3 representations which were knowingly false or fraudulent when made. In fact, each Monthly Statement
4 to Certificateholders for each Trust was knowingly made or caused to be made by the Impac Defendants
5 in contravention of the foregoing representations.

6 118. *Eighth*, the 10K filings were not signed by the Registrant for any of the trusts, but rather
7 on their behalf by the Master Servicer, Impac Funding Corporation. The Master Servicer representatives
8 signing the 10-K filings attesting to the compliance with Reg AB were Richard J. Johnson,²⁹ Executive
9 Vice President and Chief Financial Officer and Mario Fegan,³⁰ Vice President Impac Funding
10 Corporation. The Master Servicer is the very entity that was not complying with the required Reg AB
11 disclosures as of the Cut-Off Date and monthly remittance reporting. Impac's involvement in certifying
12 their own compliance rather than the Registrant is an inherent conflict of interest. The remittance
13 reporting, 10-D filings, original Cut-Off Date mortgage loan schedule filings, and potentially the
14 delinquency disclosures themselves within the Prospectus Supplement were all false and misleading.

15 119. In each of the foregoing instances, by falsely certifying and/or causing others to falsely
16 certify that there were no untrue statements relevant to the Trusts, the Impac Defendants caused
17 investors (including the Government Programs) to purchase Trust Certificates from each Trust, and
18 caused them to remain unaware that those Certificates were worth significantly less than the price paid
19 for the Certificates.

20 120. In each of the foregoing instances, by falsely certifying and/or causing others to falsely
21 certify that there were no untrue statements relevant to the Trusts, the Impac Defendants facilitated their
22 initial and ongoing, to the present, avoidance of their obligations to replace or repurchase loans that were
23 in default, which obligation was required to be fulfilled in order to create and maintain Trusts supported
24 by pools of assets that would provide the represented stream of income supporting the purchase price
25 and ongoing market value of the Trust Certificates.

26
27
28 ²⁹ Signed Impac 2005-1 Trust and Impac 2005-2 Trust 10-K filings.

³⁰ Signed all Impac 2006 and 2007 issued Trusts.

1 **VI. THE IMPAC DEFENDANTS ENGAGED IN SYSTEMATIC FRAUD TO DECEIVE**
2 **INVESTORS, INCLUDING THE GOVERNMENT PROGRAMS.**

3 121. As previously alleged herein, the Impac Defendants chose to ignore Reg AB and the
4 Trusts' stated OTS delinquency methodologies, and instead reported loan delinquencies "as of" the day
5 prior to the prior month, rather than on the day prior to the determination date for each trusts' monthly
6 remittance delinquency reporting. Additionally, for those trusts which did file a mortgage loan schedule
7 including the paid-to date as of the Cut-Off Date, evidence has been discovered which illustrates these
8 schedules were false and misleading.

9 122. Further, the decision to not publish the first month's loan-level remittance report, coupled
10 with the facts identifying loans in breach of the no default provision monthly after the Closing Date,
11 supports the position that the delinquency disclosures within the Prospectus Supplement were in fact
12 false as well.

13 123. The falsified mortgage loan schedules as of the Cut-Off Date resulted in underreporting
14 the Trusts' actual 30-day delinquency percentages at a level that would allow them to securitize
15 unworthy pools and make the associated securities attractive to unwary investors, including Government
16 Programs.

17 124. The monthly delinquency reporting was not compliant with the OTS method or Reg AB
18 reporting requirements. In the monthly reporting the Impac Defendants employed two deceptive tactics
19 that we have nicknamed "the drift" and "the float."

20 125. In "the drift," the Issuers applied an unarticulated delinquency recognition methodology
21 unsupported by the Prospectus Supplement, and in violation of Reg AB, allowing loan payments to drift
22 unpaid for an additional month before they were even considered late. For example, while they might
23 have stated in the Prospectus Supplement that a loan would count as "30 days delinquent" if it remained
24 unpaid through the *immediately* succeeding month after the missed due date, Impac would actually only
25 count such loan as delinquent if it remained unpaid through the *second* succeeding month (because
26 Impac was required under the OTS method to measure the file as of the effective date of the file, when
27 it was actually measuring as of the last day of the previous month). Employing "the drift," the Issuers
28 redefined and limited the 30+ day delinquent loans to those that had not been paid for the two previous

1 months along with the unpaid payment due on the last day of the prior month, as opposed to simply the
2 previous month. When employed, this sham tactic allowed the Issuers to hide many of the very 30+ day
3 delinquencies by simply defining them away using their non-Reg AB and non-OTS compliant standard.

4 126. In "the float," which was applied for all monthly distribution remittance reports, the
5 Issuers coupled the drift methodology with an additional backdating of payments received many weeks
6 after the monthly distribution Determination Date (the measurement date and effective date of the loan-
7 level file). Specifically, they applied loan-level payment data from later in the month as opposed to the
8 date on which the data was supposed to be assessed (thus creating a time cushion for subsequent
9 payments received between the monthly distribution Cut-Off Date (the Determination Date) and the
10 "float" date from which they actually obtained their payment status data in order to further hide loans
11 that should otherwise have been reported as delinquent).

12 127. By using the "drift" and the "float" in direct violation of their own stated methodologies,
13 and in violation of Reg AB and the OTS method, the Impac Defendants improperly hid from investors
14 (including the Government Programs) that many of the loans in their various pools had significant
15 repayment risk. They instead "disclosed" that *none* of the loans were delinquent as of either the initial
16 Cut-Off Date or the monthly Determination Date, all the while knowing that the actual percentages were
17 much, much higher. These tactics hid and covered up the original contractual no-default breaches which
18 the Impac Defendants in their role as the sponsor and master servicer made and had actual knowledge
19 of.

20 128. These deceptive tactics were used to avoid what Impac considered to be the fundamental
21 problem at the heart of many of the RMBS deals packaged on the eve of the mortgage crisis –
22 mandatory Reg AB compliance when reporting Cut-Off Date delinquency rates, since it was at odds
23 with how they wanted to report the delinquency rates from and after the initial securitization Cut-Off
24 Date. This, coupled with falsifying the Cut-Off Date mortgage loan schedules in SEC filings,
25 compounded the Impac Defendants' cover up.

26 **A. The Impac Defendants' Fraudulent Cut-Off Date Delinquency Disclosures**

27 129. All of the RMBS Trust offerings at issue here used an initial Cut-Off Date at the first of
28 the month. Under Reg AB, the Impac issuing parties were required to disclose the delinquency status of

1 the loans in the pool as of that Cut-Off Date's end of day reporting, and were effectively limited to the
2 use of a delinquency calculus no more forgiving than that offered by OTS. Impac had a legal obligation
3 to disclose loans as "delinquent" that had payments due on the first of the month and that, as of the Cut-
4 Off Date, had received neither the payment due for the previous month nor the payment due on the Cut-
5 Off Date under Reg AB, and "30 days delinquent" under accepted OTS methodology.

6 130. As a result, the Impac Defendants misrepresented in the offering documents the then-
7 current delinquency status of these loans collateralizing the vast bulk of the Trust transactions.
8 Specifically, the Prospectus Supplements for the Trusts disclosed that none of the loans of each pool's
9 aggregate principal balance was "more than 30 days delinquent" as of each Trust's Cut-Off Date. While
10 the falsified mortgage loan schedules within the public filings support these disclosures, the first
11 available loan-level remittance reports do not. While the Impac 2006-3 Trust publically filed mortgage
12 loan schedule and Prospectus Supplement disclosure indicated no loans were delinquent, the first
13 available loan-level remittance data, measured on the files effective, date illustrates *11.39% of all*
14 *balances were 30 days or more delinquent.*³¹

15 131. Consistently, the Impac Defendants falsely represented in the corresponding Pooling and
16 Servicing Agreement for Trusts that they were recognizing delinquencies pursuant to the OTS method,
17 the most permissive methodology permissible under Regulation AB. In accordance with the OTS
18 method, any loan having missed both the prior month's scheduled payment and the payment due on the
19 Cut-Off Date was not merely "delinquent" as to status, but "30+ days delinquent" as to OTS
20 delinquency tier. Impac hid these delinquencies by employing monthly remittance reports which did not
21 conform to representations Impac made in the PSAs or Reg AB.

22 **B. The Impac Defendants' Fraudulent Inclusion of Breaching Loans Were Never**
23 **Removed From The Trusts**

24 132. The Impac Defendants knew of loans in breach of the monetary default and other
25 provisions of the PSA. Impac knew of at least one loan in breach of underwriting representations, and,
26 despite two notices to Impac regarding the defects, failed to provide a notice of breach pursuant to its
27

28 ³¹ Impac and the Trustee failed to file their loan-level remittance reports for the first three
remittances. The first available loan-level file is January 2007.

obligations set forth in Sections 2.03 and 2.04 of the Pooling and Servicing Agreement and/or cure such breaches via repurchase of the defective loan pursuant to its obligation to maximize recoveries on behalf of the Trust pursuant to Section 3.15.

133. A loan is underwritten with the assumption that the borrower is going to make payments for the term of the loan.³² In order for this assumption to hold, the originator is required to underwrite a loan to the originator's underwriting standards and guidelines. Deviations from those standards and guidelines increase the risk of default and must be mitigated with compensating factors, reviewed by more senior personnel, and appropriately approved in writing. When originators ignore or violate their own underwriting guidelines, the assumption that the borrower is going to make the payments for the term of the loan is no longer valid.

134. The PSAs include representations and warranties stating that loans are originated in conformance with the originator's underwriting standards and guidelines. When these representations are breached, the first and most advantageous path for recovery is to provide a notice of breach to the Trustee seeking repurchase of a defective loan. While modifications, foreclosures and short sales all are suitable methods of mitigating losses, each of these methods generate either an economic loss in the form of reduced interest payments, principal reduction/charge-off or extension of payments. Additionally, a principal loss from each of these methods is customarily incurred.

135. Repurchase, on the other hand, results in a full recovery of principal and payment of all accrued interest due. As a result, the servicer's and master servicer's action to provide notice to a Trustee of a breach of representations and warranties is the best option for maximizing recovery on a defaulted loan. The servicing and/or Pooling and Servicing Agreement agreements provide specific contractual obligations for the sponsor, servicers and/or master servicer to notice breaches for repurchase, which should not be ignored as a method to maximize recovery.

136. One loan in the Impac 2007-2 trust provides an example. There, the originator, who was also the sponsor/seller and master servicer seeking restitution recovery, failed to underwrite the loan in accordance with the underwriting guidelines. Background information on the loan is as follows:

³² Jim Malloy, Impac, page 22 line 25 and page 23 lines 1 and 2 of November 16, 2015, 10:00 a.m. U.S. Courthouse Brooklyn, New York, 11-CR-449 (SJ) (RER) Transcript of Restitution Hearing.

1 a. The loan was underwritten as a stated income verified asset loan for a first time
2 buyer.

3 b. The borrower indicated the property was going to be his primary residence.

4 c. He indicated he was single.

5 d. The borrower's stated income as a field advisor for a cast iron company was
6 \$114,900, plus net rental income of \$13,500 per year.

7 137. While his prior rental rate was only \$800 a month, this borrower's monthly payment
8 between the first and second mortgage, along with taxes and insurance, was now going to be over
9 \$4,200 a month. A payment shock and increase of 425% should have been a red flag to the underwriter.

10 An underwriting review of the original information identified several additional issues:

11 a. The borrower's income failed the reasonableness test for the position. The
12 maximum income for this type of a role appears to be closer to \$80,000 per year rather than
13 \$114,000 per year based on Indeed's December 2015 comparable positions in Brooklyn NY. The
14 average salary was closer to \$65,000. Unless there was a significant increase in the maximum
15 income of approximately 30% and this borrower had the highest paying position available, the
16 borrower's stated income was significantly over stated.



what:

Steel Erection

job title, keywords or company

where:

Brooklyn, NY

city, state, or zip

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My recent searches

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Steel Erection Foreman

Structural Steel Project Manager - BROOKLYN ny

Structural Steel Project Manager

x clear searches

Sort by: **relevance** - date

Distance:

within 25 miles

Salary Estimate

\$55,000+ (16)

\$65,000+ (10)

\$70,000+ (8)

\$75,000+ (7)

\$80,000+ (5)

Project Manager (Structural Steel)

Liberty Personnel Services

7 reviews - New York, NY

5+ years working as a Project Manager doing both structural erection and miscellaneous steel. Field measure steel stairs, rails, gates, ladders etc....

13 days ago - email

Sponsored

Tower Top Hand - Charleston, SC

Atlantic Tower Services

6 reviews - United States

Erection of various tower types. Antenna installation and alignment, TMA's, Diplexers, Coax, Connectors, Jumpers, Installation of steel platforms and grounding....

22 days ago - email

Sponsored by TowerClimber

Project Manager

Michael Page US - Plainfield, NJ

Experience working for a steel contractor, hopefully with miscellaneous iron exposure.

Management experience and scheduling skills required to plan, organize...

15 days ago - email

Sponsored

Structural Steel Project Manager

C & A Iron Works - Brooklyn, NY 11215 (Park Slope area)

Review and develop structural miscellaneous steel drawings. Develop cost-effective erection plans and schedules for completion projects....

Easily apply

b. While the borrower indicated the property was going to be his principal residence, several of the loan documents indicated his residency would continue to be his prior address for tax notices.³³

³³ 103rd Avenue was the borrower's prior address.

**TAX ESCROW ACCOUNT DESIGNATION OF
MORTGAGE INVESTING INSTITUTION
TO RECEIVE TAX BILLS**
(Real Property Tax Law, Sec. 204)

I DESIGNATE THE BANK OR OTHER MORTGAGE INVESTING INSTITUTION LISTED BELOW, ITS AGENTS, SUCCESSORS AND ASSIGNS TO RECEIVE ALL TAX BILLS FOR MY REAL PROPERTY DESCRIBED BELOW FOR SO LONG AS THE REAL PROPERTY TAX ESCROW ACCOUNT NOW BEING ESTABLISHED SHALL REMAIN IN EFFECT.

DATE JANUARY 31, 2007

(1) [REDACTED] NAMED

(2) CHAUNCEY STREET ADDRESS OF PROPERTY SUBJECT TO TAX ESCROW ACCOUNT

(3) BROOKLYN NY 11233 KINGS
CITY/TOWN (4) STATE & ZIP CODE (5) COUNTY

(6) SBC 607 BLOCK [REDACTED] LOT 76 PROPERTY IDENTIFICATION (AS SHOWN ON TAX BILL OR TAX ROLL)

(7) 103RD AVENUE, SOUTH RICHMOND HILL, NEW YORK 11419 OWNER'S MAILING ADDRESS (IF DIFFERENT FROM (2), ABOVE)

[REDACTED] 01/31/2007
SIGNATURE(S) (8) DATE

(9) IMPAC FUNDING CORPORATION d/b/a IMPAC LENDING GROUP

and

ADDRESS CERTIFICATIONMORTGAGOR: [REDACTED]

I hereby certify that the above referenced mortgaged property is located at the address indicated below, and that the correct mailing address of the mortgagor is also indicated below:

The complete PROPERTY street address is as follows:

[REDACTED] CHAUNCEY STREET
(Street)BROOKLYN
(City)NEW YORK 11233
(State) (Zip Code)

The complete MAILING address is as follows:

[REDACTED] 103RD AVENUE
(Street)SOUTH RICHMOND HILL
(City)NEW YORK 11419
(State) (Zip Code)

c. Both the tax escrow mailing address information and the address certification statements indicated an address other than the underlying property address. This was a further indication that the underwriter knew the loan was not the borrower's primary residency.

d. The underwriting guidelines also limited the combined loan-to-value (CLTV) to 95% for first time buyers. The actual CLTV for this loan was 100%, and no approval for this exception was presented in the file.

21. First time homebuyer with less than full doc is limited to a max 95% CLTV.

e. The credit report showed no prior record of mortgage activity, indicating the borrower had not previously purchased a property. Additionally, a search of property records for the borrower shows no additional property owned in his name. The borrower can only have net rental income if they actually own a property. No proof of verification of assets was available in the file for net rental income, such as a lease or proof of ownership of additional property.

TRADE SUMMARY						
	COUNT	BALANCE	HIGH CREDIT	PAYMENT	PAST	DUE
MORTGAGE	0	0	0	0	0	0
AUTO	0	0	0	0	0	0
EDUCATION	0	0	0	0	0	0
OTHER INSTALLMENT	0	0	0	0	0	0
OPEN	0	0	0	0	0	0
REVOLVING	8	303	19000	50	0	0
OTHER	0	0	0	0	0	0
TOTAL	8	303	19000	50	0	0
SECURED DEBT	0		OLDEST TRADELINE	12/03		
UNSECURED DEBT	303		DEBT/HIGH CREDIT	2%		

138. Each of these are examples of breaches of representations and warranties at the point of origination by the underwriter of the loan, which was Impac Funding Corporation. Impac Funding Corporation was also the sponsor/seller and master servicer, which required them to provide notice of breaches to the trust.

139. As time passed, the master servicer reviewed further evidence indicating the original loan was not underwritten to the standards. As part of a short sale evaluation, the borrower provided his 2008

1 and 2009 tax returns to the master servicer. The returns indicated the borrower was married, and not
 2 single as indicated on his loan application. The couple's combined 2008 and 2009 income was less than
 3 \$19,100 each year.

4 **Filing**
 5 **status**

1 ☐ Single
 2 ☒ Married filing jointly (even if only one had income)

8 21 Subtract line 20 from line 15. This is your adjusted gross income. ▶ 21 19,085
 For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 78. EEA Form 1040A (2008)

10 and

12 21 Subtract line 20 from line 15. This is your adjusted gross income. ▶ 21 18,563
 For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 87. EEA Form 1040A (2009)

14 140. The borrower's W2 for 2008 indicated he was making closer to \$8 an hour and his tax
 15 returns showed no net rental income. The borrower's 2010 paystubs indicated an \$8 an hour pay rate.

Employee Number: 2092
 Department Number:
 Social Security Number: XXX-XX-XXXX
 Marital Status: MARRIED
 Number Of Allowances: 01

Hours and Earnings			
Description	Hours	Rate	This Period
REGULAR	32.00	8.0000	256.00
O/TIME			
HOLIDAY	8.00	8.0000	64.00

141. As evidenced above, the master servicer had substantial evidence prior to the short sale that the loan was originated in breach of the underwriting guidelines. Yet Impac Funding Corporation, as the master servicer, provided no notice of breach to the Trustee. This was confirmed by a review of the ABS 15G report filings with the SEC, which indicated no activity for this or any Trust to date.³⁴ Even if Impac Funding Corporation as the originator ignored obvious underwriting issues at inception, they became apparent again during subsequent loss mitigation efforts.

142. As the sponsor, the Impac Defendants breached their contractual obligations when they included the defectively underwritten loan in the Trust, failed to correctly state the mortgage loan schedule values which were inherently incorrect due to the false underwriting, and ignored the default provision of the mortgage note in violation of the no monetary default provision.

³⁴

<http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001018905&owner=exclude&count=40&hidefilings=0>

143. As the master servicer, Impac Defendants then failed to provide notice of breach to the Trustee requiring repurchase of the loan even when they became aware of the underwriting breach in their capacity as master servicer approving the short sale. This violated their duty under Section 3.15 of the PSA to maximize recovery upon default. In fact, Impac has not provided a single notice of breach for any defective loans in any of their ABS15G reporting, and has only filed two of their required quarterly ABS15G filings with the SEC.

C. The Impac Defendants' Fraudulent Inclusion Of Breaching Loans In Default

144. As shown in the Table below, the Impac Defendants improperly included at a minimum in excess of \$197 million in loans they knew to be in breach of one or more closing date representations. Additionally, in each case where the Impac Defendants included a mortgage loan schedule within a public filing as of the Cut-Off Date, the first loan-level remittance reports subsequently illustrated the disclosed paid-to dates for certain loans contained in the public filings were false.

145. For example, the Impac 2006-5 Trust illustrated all loans paid through the Cut-Off Date of November 10, 2006 as follows:

IMPAC 2006-5 TRUST POOLING AND SERVICING AGREEMENT MORTGAGE LOAN SCHEDULE V061976		
IPTD³⁵	Count	Balance
20061110	1	\$158,835.21
20061112	1	\$51,973.08
20061116	1	\$76,942.85
20061201	5,191	\$1,695,215,727.63
20070101	93	\$26,389,404.34
Total	5,287	\$1,721,892,883.11

In contrast, the first available loan-level remittance report (from January 2007) indicated at least 150 loans had paid-through dates prior to the schedule above and at least 151 loans were in breach of the no monetary default provision on the Closing Date:

³⁵ IPTD stands for Interest Paid Through Date. Partial payments are not generally accepted as payments in full. In order for the interest payment to be applied the full payment would need to be applied.

IMPAC 2006-5 TRUST JANUARY 2007 FIRST REMITTANCE REPORT			
PaidToDate	Count	End Balance	In Default on Closing Date
10/1/2006	26	\$8,685,057	In Monetary Default on Closing Date
11/1/2006	124	\$45,526,885	In Monetary Default on Closing Date
11/10/2006	1	\$158,723	In Monetary Default on Closing Date
12/1/2006	1,897	\$802,877,056	Undetermined
12/12/2006	1	\$51,959	Undetermined
12/16/2006	1	\$76,885	Undetermined
1/1/2007	3,115	\$827,492,520	Undetermined
2/1/2007	112	\$24,238,120	Undetermined
3/1/2007	9	\$2,440,581	Undetermined
7/1/2007	1	\$172,413	Undetermined
Total	5,287	\$1,711,720,201	

146. This same pattern exists for all four trusts which provided mortgage loan schedules filed with the SEC. The Impac 2006-3, Impac 2006-4, Impac 2006-5 and Impac 2007-1 Trusts all included a mortgage loan schedule within a public filing prior to the first available loan-level remittance. The loan-level remittance reports indicated numerous loans within each trust had paid-to dates prior to those illustrated within in the mortgage loan schedules, indicating these schedules were in fact false. The delinquency disclosures based on false mortgage loan schedules would therefore also be misleading and false. These four altered schedules also provide support that Impac knew the paid-to dates in the unadjusted mortgage loan schedules would be in conflict with their Prospectus Supplement delinquency disclosures and contractual obligations pursuant to the Pooling and Servicing Agreements to exclude from the pool loans which were 30 days delinquent on the Cut-Off Date.

147. The Impac Defendants' intentional inclusion of non-conforming loans and false statements in the mortgage loan schedules as to the paid-to date of loans violated both Reg AB and Section 17 of the Securities and Exchange Act of 1933, giving rise to an affirmative obligation by the Impac Defendants to: a) replace or repurchase loans in order to ensure investors (including the Government Programs) received the value for which they had paid; and b) disgorge to the SEC the illicit gains they reaped by deceptively including unreported delinquent loans in their Trusts and potentially securitizing the assets in violation of the shelf registration delinquency limits. The Impac Defendants concealed these obligations from investors and the SEC, and continue to hide these obligations to this

day. The minimum notional value of loans in breach of the monetary default provision as of Closing Date, as identified in the first available loan-level remittance reports for each Trust is as follows:

SUMMARY OF MINIMUM NOTATIONAL MONETARY DEFAULT BREACHES			
Trust	Closing Date	Minimum Monetary Default Loans	Amount
Impac 2007-3	4/30/2007	Undetermined first loan-level July 2011	
Impac 2007-2	3/29/2007	55	\$20,793,398
Impac 2007-1	2/22/2007	64 (measured in Aug. 2007)	\$17,066,060
Impac 2006-5	12/21/2006	151	\$54,370,665
Impac 2006-4	11/16/2006	85	\$25,432,516
Impac 2006-3	9/29/2006	44 (measured in Jan. 2007)	\$14,258,750
Impac 2006-2	6/29/2006	9 (measured in Jan. 2007)	\$2,965,196
Impac 2006-1	3/30/2006	Undetermined first loan-level Jan. 2009	
Impac 2005-2	12/29/2005	138	\$27,710,408
Impac 2005-1	6/10/2005	128	\$35,024,214
Total Minimum Loans in Monetary Default as of Closing Date			\$197,621,207

148. For two Trusts, Impac 2007-3 and Impac 2006-1, no measurement was conducted, as the first available loan-level monthly remittance report was not published for *several years* after the Closing Date. For five of the trusts the first available loan-level remittance report was not made available until several periods after the first remittance report. The trustee would need this loan-level data to generate the monthly remittance report, so the information had to be available. It is a customary practice for the trustee to publish the loan-level data along with the monthly remittance.

149. The decision to not publish the first loan-level remittance information was made to cover up the full scope of loans in breach of the monetary default provision and magnitude of fraudulent misrepresentations of the paid-to dates in the Cut-Off Date mortgage loan schedules filed with the SEC. The trustee has been contacted on two separate occasions in 2015 and 2016 and continues to fail to publish the first loan-level remittance file. These failings at a minimum intentionally conceal monetary default breaches, which are further masked by payments made between the Closing Date and first available monthly loan-level file.

1 D. The Impac Defendants' Ongoing False Delinquency Disclosures In Monthly
2 Remittance Reports Perpetuated And Concealed The Initial Fraud.

3 150. In addition to the materially false information that The Impac Defendants disclosed in the
4 SEC Shelf Registrations, the Impac Defendants have, each month and as to each Trust, made, used, or
5 directed others to make and use similar false statements regarding the purported delinquency rate of the
6 pool assets for the Trusts. Those false statements appear both in Distribution Remittance Reports
7 provided by either the Trustee or Securities Administrator (in accordance with each Trust's PSA) and in
8 10-D filings submitted to the SEC.

9 151. The measurement date for delinquency corresponds with the regulatory definition, "the
10 date on and after which collections on the pool assets accrue for the benefit of asset-backed security
11 holders" and the associated "period." In the case of RMBS trusts, this corresponds with the day prior to
12 the Determination Date of the trust, rather than the Impac Defendants' fraudulent use of the last day of
13 the prior month. The Determination Date is customarily the 15th of the month in which the distribution
14 is paid to certificate holders.

15 152. For all ten Trusts, the Impac Defendants directed the Servicers, through the
16 corresponding PSAs, to generate their monthly schedules of loan data as of the day *prior* to the
17 Determination Date (on or between the 14th of the month). While payments were collected up to and
18 including the day prior to the monthly Determination Date, on the 14th of the month for the associated
19 distribution remittance report, the delinquency measurement was performed as if the file was received
20 on the last day of the prior month, *fourteen days earlier*.

21 153. Stated another way, even though the resultant loan payment status fields in these reports
22 ("Next Due," "Paid Through," or similar) reflected all regular and late payments received through the
23 mid-month Determination Date, the Impac Defendants directed the Trustees and/or Securities
24 Administrators to treat the data for these fields improperly as if they reflected the payment status of the
25 loans as of the end of the *previous month*.

26 154. This deceptive method did four things. First, it failed to report loans that were 30 days
27 delinquent as of the associated Measurement Date of the loan file, the day prior to the Determination
28 Date (as required by Reg AB). Second, it misreported delinquency in each and every distribution

1 remittance report by one month of delinquency for the majority of delinquent loans (*i.e.*, 30 day
2 delinquent loans were fraudulently classified as current, 60 day delinquent loans were fraudulently
3 classified as 30 days delinquent, 90 days delinquent loans were fraudulently classified as 60 days
4 delinquent). Third, it allowed payment to be applied to loans up to and including the day prior to the
5 Determination Date, the 14th of the month, while treating the file as if it was received on the last day of
6 the prior month. Fourth, it covered up the original false statements concerning delinquency and paid-to
7 date contained in public filings with the SEC.

8 155. In all instances, the delinquency status representations, as furnished in the monthly
9 distribution remittance reports and as disclosed on the SEC website, have been and continue to be
10 materially false. These representations are also, as described in detail above, in violation of the OTS
11 methodology.

12 156. The Office of the Comptroller of the Currency (“OCC”) has replaced the OTS and has
13 now conducts oversight of thrifts. On information and belief, it is the OCC’s position that the approved
14 OTS method would not be met where, as here, the “as of” date one day prior to the Determination Date
15 for all cash flow distributions and loan-level reporting was a different date than the measurement date
16 for measuring delinquency. Per the OCC, the regulatory and statutory enforcement of the OTS method
17 requires the “measurement date” for delinquency reporting to be the same as the “measurement date” of
18 the file itself.

19 157. As a result, the Impac Defendants have falsely reported *and continue to falsely report* –
20 and/or caused others to falsely report – lower pool asset delinquencies than actually exist. Specifically,
21 through the improper use of end-of-month reporting and by improperly back-crediting all payments
22 made over the the first two weeks of each month, the Impac Defendants misleadingly and falsely shifted
23 the recognized delinquency tiers down one level for all loans due between the 1st and the 15th which
24 were in fact delinquent (*i.e.*, the actual 90+ day delinquencies were and are being reported as 60+ day
25 delinquencies, the actual 60+ day delinquencies were and are being reported as 30+ day delinquencies,
26 and significant percentages of loans that are actually 30+ day delinquencies are not being reported at all
27 for loans due on the first of the month) for approximately 99 percent or greater of the delinquent loans.³⁶

28 ³⁶ Less than 1% of loans had payment due dates on days other than the 1st of the month.

E. Detailed Example From Impac 2006-4 Trust

158. For example, the false remittance reporting scheme for the Impac 2006-4 Trust covered up discrepancies that would have otherwise led the SEC and the Government Programs to learn that the initial Prospectus Supplement Cut-Off Date delinquency disclosures were fraudulent.

159. In the Impac 2006-4 Trust Prospectus Supplement,, the Impac Defendants materially misrepresented that, "None of the mortgage loans were 30 days or more delinquent as of the Cut-Off Date." The FWP filed with the SEC included the following false information supporting the Prospectus Supplement disclosure:

IMPAC 2006-4 TRUST FWP MORTGAGE LOAN SCHEDULE D584010		
Paid-to	Loan Count	Current Balance
20061101	5,248	\$1,398,109,254
20061026	1	\$47,451
20061005	2	\$304,982
20061029	1	\$750,000
20061002	1	\$475,200
20061006	1	\$314,761

160. While the FWP as of November 1, 2006 Cut-Off Date indicated all loans had made their required payment due as of the Cut-Off Date, the first loan-level remittance file, made available 44 days later, indicated this was not the case. The first available loan-level remittance report, illustrated below, gives the lie to the fraudulent disclosure of the paid-to dates in the FWP and false statements regarding the delinquency of loans as of the Cut-Off Date. Eighty-five loans were paid through only 9/1/2006 or 10/1/2006, as well as the minimum number of loans which are in default as of the Closing Date.

IMPAC 2006-4 TRUST DECEMBER 14, 2006 REMITTANCE SUMMARY			
PaidToDt	Current Balance	Count	%
9/1/2006	5,569,879.06	13	In Monetary Default
10/1/2006	19,862,637.32	72	In Monetary Default
10/5/2006	59,886.25	1	Undermined
10/18/2006	114,505.04	1	Undermined
10/19/2006	99,632.62	1	Undermined
10/26/2006	47,451.23	1	Undermined
11/1/2006	1,272,892,674.95	4,709	Undermined

IMPAC 2006-4 TRUST DECEMBER 14, 2006 REMITTANCE SUMMARY			
PaidToDt	Current Balance	Count	%
11/6/2006	228,000.00	1	Undermined
12/1/2006	88,356,016.66	466	Undermined
1/1/2007	1,414,166.45	6	Undermined
3/1/2007	290,774.20	2	Undermined
Total	1,388,935,623.78	5,273	

161. This intentional deception illustrated a false sense of more favorable performance for the loan pool on the Cut-Off Date.

162. This behavior was systemic. This same false sense of security can be illustrated in each of the mortgage loan schedules included within public filings. The mortgage loan schedules include in three additional trust public filings illustrate a pattern of misrepresentation and intent to defraud investors. These trusts include Impac 2006-3, Impac 2006-5, and Impac 2007-1. In each case the mortgage loan schedule filed with the SEC included fraudulent and more favorable paid-to dates than were illustrated within the first available loan-level remittance schedule. These Cut-Off Date mortgage loan schedules stated all payments due prior and as of the Cut-Off Date have been made, which was shown to be false.

163. The monthly remittance reporting and every 10-D filing also falsely stated a delinquency percentage that was not calculated in compliance with the OTS method and was designed to deceive investors. A comparison of the delinquencies stated in the Impac 2006-4 Trust remittance report compared to the proper calculation of delinquencies using the OTS method uncovers the false statements.

164. The Impac Defendants improperly used payment status data as of the middle of December, but treated all these loans as if they were reviewing payment data from the end of November. By backdating all payments to a date in the previous month, Impac was able to hide delinquencies. As part of the deception, they represented that they were measuring delinquency as of the last day of the prior month, even though Reg AB requires the measurement date to be on the file "as of" date, or in this case the day prior to the Determination Date as stated in the PSA.

1 165. The loan-level data for the Impac 2006-4 Trust tells a different story. It reveals that most
2 of the loans in the Trust had received two additional payments between September 2, 2006 and October
3 15, 2006 (the date for which the loan data was generated). These rolling late payments, applied
4 retroactively, deceptively brought most loans down from "30+ day delinquent" status back into "late, but
5 not delinquent" status. Given the mid-October date on which the data was generated, however, those
6 loans that were actually at the time 30-59 days delinquent as of the monthly Cut-Off Date but received
7 only one subsequent payment would still have been required under the OTS method to be included as
8 assets "30+ days delinquent" as of October 15, 2006. And those loans that were 30-59 days delinquent
9 as of the monthly Cut-Off Date but had not received any subsequent payments would have been required
10 under the OTS method to be included as assets "60+ days delinquent."

11 166. Thus, by improperly backdating the OTS calculation to the previous month, the Impac
12 Defendants fraudulently shifted those 60+ day delinquencies to 30+ day delinquencies and shifted those
13 30+ day delinquencies out of the reporting scheme altogether.

14 167. If the true asset delinquencies had been revealed as of the mid-December date on which
15 the loan data was generated for the first remittance report for the Impac 2006-4 Trust, the Government
16 Programs and the SEC would have been alerted to a suspicious one-month jump in 30+ day
17 delinquencies from 0.000% (as falsely reported in the Prospectus Supplement) to 1.43% and even more
18 suspicious 0.40% 60 days delinquent disclosure. Instead only the 0.40% of loans were falsely reported
19 as 30 days delinquent in the December 2006 first remittance report. The loan-level data shows these 13
20 loans were paid to 9/1/2006 as of the December 14, 2006 loan-level remittance. Not only where these
21 loans actually 60 days delinquent as of the first loan-level remittance and falsely reported as 30 days
22 delinquent, these loans were in fact 30 days delinquent on the November 1, 2006 Cut-Off Date,
23 illustrating the Prospectus Supplement disclosure was false as well.

24 168. Comparing the loan-level data with the remittance reports illustrates the ongoing false
25 reporting which has continued to go on in each trust for each period since inception to cover up the
26 original false disclosures:

IMPAC 2006-4 TRUST						
SEPT 2016 UNDERREPORTING OF ASSET DELINQUENCIES						
		"As of" Date	% 30+ DO	% 60+ DO	% 90+ DO	Summary
Sept 2016	Monthly Report and Website ³⁷ (Backdated)	8/31/2016	14.23%	12.74%	12.18%	The Impac Defendants falsely reported pool delinquencies as if data from 8/31/2016 were correct "as of" date was 9/14/2016. By backdating the measurement and crediting all payments made through mid-September as having been paid in August, the Impac Defendants under-reported all pool delinquencies by one tier.
	Actual Pool Delinquencies (Proper Date)	9/14/2016	17.66%	14.23%	12.74%	
	Percentage of Assets Underreported Using Improper Backdating and Crediting of Later Payments		3.43%	1.49%	0.56%	Further, by applying this improper methodology, the Impac Defendants avoided reporting <i>any</i> of the loans that were actually 30 days delinquent as of 9/1/2016 (an additional 3.43% of the pool).

169. As shown in the table above for September 2016, through their creation and application of a deceptive and improper method for determining pool asset delinquencies, the Impac Defendants avoided reporting the assets that were actually 30-59 days delinquent as of 9/1/2016 and 9/14/2016³⁸ (an additional 3.43% of the asset pool).

170. This concealment continues for all Impac trusts for all periods to the present day.

171. In this way for all the Trusts, the Impac Defendants have been able not only to keep the

³⁷ In this table, the "Monthly Report" numbers listed for the %30+, %60+, %90+ categories are the delinquency percentages as reported on the Morgan Stanley website, percentages that are the same as the false delinquent asset percentages disclosed in the Trust's corresponding distribution remittance reports. For this Trust, the Morgan Stanley numbers for the percentage of assets "30+ days" delinquent combine the percentages as disclosed in the corresponding distribution remittance reports for assets "1 PAYMENT," "2 PAYMENTS," and "3+ PAYMENTS" delinquent. The numbers for "60+ days" combine the percentages disclosed for assets "2 PAYMENTS" and "3+ PAYMENTS" delinquent. The numbers for "90+ days" show the percentages disclosed for assets "3+ PAYMENTS" delinquent. As the distribution remittance reporting for this Trust does not include delinquency categories beyond "3+ PAYMENTS," the "120+ days" delinquent category is not available for comparison (it bears note, however, that the Morgan Stanley website improperly reports assets "120+ days" delinquent as "0.00%" rather than "N/A" or similar).

³⁸ All remaining loans in the trust were due for payments on the 1st of the month. These loans would be considered 30 days delinquent both on 9/1/2016 and 9/14/2016, with 9/14/2016 being the effective date of the file from the servicer.

1 Government Programs in the dark regarding the true ongoing delinquencies and breaching loans within
2 the Trusts they had created, but also to conceal the fact that they had initially securitized pools of loans
3 that, even at Trust inception, were significantly delinquent and in breach as of their respective Cut-Off
4 Dates and Closing Date.

5 172. Having employed this deceit from the very first month after securitization, the Impac
6 Defendants have prevented the Government from reasonably ascertaining the false nature of the Impac
7 Defendants' initial Prospectus Supplement delinquency representations, payment status of loans as of
8 the Cut-Off Date, and breaching status as of the Closing Date. This fraudulent subterfuge induced
9 purchases of billions of dollars of certificates in these Trusts. And by continued employment of this
10 scheme, the Impac Defendants are, even now, concealing a pattern of fraud that might otherwise have
11 led the Government to investigate and uncover the Impac Defendants' original fraudulent disclosures
12 and representations and resultant fraudulent securitization.

13 173. Relator has separately provided disclosure to the Impac Defendants, who are in a position
14 to provide notice to the Trustee, of all fraudulent disclosures within mortgage loan schedules, free
15 writing prospectuses, and PSAs, and contractual breaches for loans in monetary default and
16 misrepresentations of compliance with originator underwriting standards which the
17 originator/sponsor/master servicer Impac Funding Corporate was aware of. To date Impac has failed to
18 provide notice to the trustee of any loans for repurchase.

19 **VII. FURTHER EVIDENCE OF THE IMPAC DEFENDANTS CONCEALMENT OF THE**
20 **SCHEME**

21 **A. Transactional Concealment Methods – Failure To Publish Loan-Level Data**

22 174. The concealment is intentional, as Relator's analysis has uncovered. The loan-level data
23 for five of the trusts' first remittance reports was and continues to be not disclosed and unavailable to
24 investors. In three of these cases, monetary defaults are evident even when using the first available
25 loan-level data file from a period *other* than the first remittance report period, even after a period of four
26 months had passed wherein the delinquencies could have been cured.

1 B. Technological Concealment Methods – Presentation Of Mortgage Loan Schedules
2 In Indecipherable Format

3 175. For the Trusts at issue here, Cut-Off Date mortgage loan schedules were filed with the
4 SEC in FWP's or subsequent SEC 8-K disclosures merely as high-megabyte *text* files nearly
5 indecipherable to Government Programs. These files thus posed several non-trivial technical challenges
6 to an examiner.

7 176. First, the files were so large that many conventional PCs in the 2006-2007 time frame
8 were unable to manipulate them. Computers sufficient to open and manipulate such files usually
9 required a minimum of 8GB of RAM along with dual or quad processors. PCs with less than these
10 minimum requirements were often unable even to open the files, much less allow a user to convert them
11 into a form where they could be utilized properly. Moreover, many of these files were made large by
12 including the same mortgage loan schedule multiple times within a given FWP.

13 177. Second, once the files were opened, the mortgage loan schedule data needed to be
14 manually reconstructed into database format from the flat text form in which it was provided. A full
15 mortgage loan schedule normally has between 60 and 120 data elements, multiplied by the number of
16 loans in the file. When these mortgage loan schedules were filed with the SEC they were broken into
17 multiple parts with six to twelve data elements per section. As a result, each mortgage loan schedule text
18 file had between six to twenty sections with no telltale characteristics that would guide in the
19 reconstruction of the original data set (a data set having upward of 100,000 discrete data points).

20 178. Only after this painstaking technical process had been completed could each of the
21 sections be combined and properly delimited so as to provide a full mortgage loan schedule showing
22 each loan and every corresponding data element corresponding to the loan. Only once the mortgage loan
23 schedule had been fully reconstructed could the then-current current balance, loan count, and payment
24 status be compared to the corresponding Prospectus Supplement disclosure, but only if the paid-to dates
25 had not also been falsely stated.

26 179. Finally, all four of the mortgage loan schedules filed with the SEC for four separate
27 Impac trusts were false and included false and misleading paid-to dates, which could only be discovered
28 when reviewing subsequent monthly loan-level data files. Five of the ten trusts failed to publish the first

1 loan-level file, which would have been used to detect false statement in Cut-Off Date mortgage loan
2 schedules.

3 180. This method of presenting loan data in garbled form allowed the Impac Defendants' to
4 conceal their knowing and material falsification of records or reports, upon which Government
5 Programs and others relied. Determining the true nature of loan delinquencies was thus rendered an
6 exercise of finding the proverbial needle in the haystack.

7 **C. Impac Defendants' Wire Fraud**

8 181. Impac filed their public offering documents and PSA agreements with the SEC.
9 Additionally, these documents were provided to investors electronically for their evaluation. The
10 purchase and sale of loans between the trust and the depositor and for the certificates from the trust to
11 certificateholders based on these documents occurred via wire transfer. The Impac Defendants
12 knowingly issued false statement within public filings with the SEC, which were used by investors to
13 purchase securities via wire transfer. The transfer of the securities via wire transfer settlement
14 constitutes wire fraud committed by the Impac Defendants.

15 **COUNT I**

16 *(Violation of False Claims Act, 31 U.S.C. § 3729(a)(1); 31 U.S.C. § 3729(a)(1)(A))*³⁹

17 182. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
18 of the information involved, or with actual knowledge of the falsity of the information, knowingly
19 presented or caused to be presented, and may still be presenting or causing to be presented, to the United
20 States of America false or fraudulent claims for payment or approval in violation of 31 U.S.C.
21 § 3729(a)(1); 31 U.S.C. § 3729(a)(1)(A).

22 183. As a result of the Impac Defendants' actions alleged herein, the United States of America
23 has been, and may continue to be, severely damaged.

24
25
26
27
28 ³⁹ To the extent wrongdoing occurred after May 20, 2009, this Complaint should be deemed to
include violations of the Federal False Claims Act's recent amendments.

COUNT II

(Violation of False Claims Act, 31 U.S.C. § 3729(a)(2); 31 U.S.C. § 3729(a)(1)(B))⁴⁰

184. Relator incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.

185. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made, used, or caused to be made or used, and may still be making, using, or causing to be made or used, false records or statements material to the payment of false or fraudulent claims, in violation of 31 U.S.C. § 3729(a)(2); 31 U.S.C. § 3729(a)(1)(B).

186. The United States of America, unaware of the falsity of the claims and/or statements made by the Impac Defendants, and in reliance on the accuracy of these claims and/or statements, paid and may continue to be paying or reimbursing false or fraudulent claims.

187. As a result of the Impac Defendants' actions alleged herein, the United States of America has been, and may continue to be, severely damaged.

COUNT III

(Violation of False Claims Act, 31 U.S.C. § 3729(a)(1)(C))⁴¹

188. Relator incorporates herein by reference the preceding paragraphs of the Complaint as though fully set forth herein.

189. The Impac Defendants conspired with numerous entities to prepare and deliver inaccurate reports to the United States, including accounting firms, auditors, vendors, lawyers, and other business entities, in violation of 31 U.S.C. § 3729(a)(1), (a)(2).

190. As a result of Defendants' actions as set forth above, the United States of America has been, and may continue to be, severely damaged.

⁴⁰ To the extent wrongdoing occurred after May 20, 2009, this Complaint should be deemed to include violations of the Federal False Claims Act's recent amendments.

⁴¹ To the extent wrongdoing occurred prior to May 20, 2009, this Complaint should be deemed to include violations of the Federal False Claims Act prior to its recent amendments, e.g., 31 U.S.C. § 3729(a)(3).

COUNT IV

*(Violation of False Claims Act, 31 U.S.C. § 3729(a)(1)(G))*⁴²

191. Relator incorporates herein by reference the preceding paragraphs of the Complaint as though fully set forth herein.

192. As detailed above, Defendants knowingly made, used, and/or caused to be made or used, false records or statements material to an obligation to pay or transmit money or property to the Government, and/or knowingly concealed or knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to the Government pursuant to 31 U.S.C. § 3729(a)(1)(G).

193. As a result of Defendants' actions as set forth above, the United States of America has been, and may continue to be, severely damaged.

COUNT V

(Violation of California False Claims Act)

194. Relator incorporates herein by reference the preceding paragraphs of this Complaint as though fully set forth herein.

195. This is a civil action brought by Relator on behalf of the State of California against the Impac Defendants under the California False Claims Act, Cal. Gov't Code § 12652(c).

196. In the State of California, the relevant State pension funds include CalPERS, the California State Teachers' Retirement System, the Department of Personnel Administration – State Savings Plus Program, the University of California Retirement Plan, California PERF, California Teachers, San Diego County pension fund, and the pension funds for San Francisco City and State, among others. These funds invested heavily in the Impac Defendants.

197. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly

⁴² To the extent wrongdoing occurred prior to May 20, 2009, this Complaint should be deemed to include violations of the Federal False Claims Act prior to its recent amendments, e.g., 31 U.S.C. § 3729(a)(7).

1 presented or caused to be presented, and may still be presenting or causing to be presented false or
2 fraudulent claims for payment or approval in violation of Cal. Gov't Code § 12651(a)(1).

3 198. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
4 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
5 used or caused to be made or used, and may still be making, using or causing to be made or used, false
6 records or statements material to false or fraudulent claims, in violation of Cal. Gov't Code §
7 12651(a)(2).

8 199. The Impac Defendants conspired with numerous entities to prepare and deliver
9 inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other
10 business entities, in violation of Cal. Gov't Code § 12651(a)(3).

11 200. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
12 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
13 used or caused to be made or used, and may still be making, using or causing to be made or used, false
14 records or statements to conceal, avoid or decrease an obligation to pay or transmit money to the State of
15 California or its political subdivisions in violation of Cal. Gov't Code § 12651(a)(7).

16 201. The State of California, or its political subdivisions, unaware of the falsity of the claims
17 and/or statements made by the Impac Defendants, and in reliance on the accuracy of these claims and/or
18 statements, paid, and may continue to pay, for recipients of pension program benefits funded by the
19 State and/or State subdivision.

20 202. As a result of the Impac Defendants' actions as set forth above, the State of California,
21 including its political subdivisions, has been, and may continue to be, severely damaged.

22 COUNT VI

23 *(Violation of Delaware False Claims and Reporting Act)*

24 203. Relator incorporates herein by reference the preceding paragraphs of this Complaint as
25 though fully set forth herein.

26 204. This is a civil action brought by Relator on behalf of the Government of the State of
27 Delaware against the Impac Defendants under the Delaware False Claims and Reporting Act, Del. Code
28 Ann. tit. 6, § 1203(b).

1 205. In the State of Delaware, the relevant State pension funds include the Delaware Public
2 Employees' Retirement System, which consists of nine retirement plans for various public employees,
3 and three commingled pension funds. These funds invested heavily in the Impac Defendants.

4 206. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
5 of the information involved, or with actual knowledge of the falsity of the information, knowingly
6 presented or caused to be presented, and may still be presenting or causing to be presented, to an officer
7 or employee of the State of Delaware, or its political subdivisions, false or fraudulent claims for
8 payment or approval, in violation of Del. Code Ann. tit. 6, § 1201(a)(1).

9 207. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
10 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
11 used, or caused to be made or used, and may still be making, using or causing to be made or used, false
12 records or statements to get false or fraudulent claims paid or approved by the State of Delaware, or its
13 political subdivisions, in violation of Del. Code Ann. tit. 6, §1201(a)(2).

14 208. The Impac Defendants conspired with numerous entities to prepare and deliver
15 inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other
16 business entities, in violation of Del. Code tit. 6, § 1201(a)(3).

17 209. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
18 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
19 used, or caused to be made or used, and may still be making, using or causing to be made or used, false
20 records or statements to conceal, avoid, increase or decrease an obligation to pay or transmit money to
21 the State of Delaware, or its political subdivisions, in violation of Del. Code Ann. tit. 6, § 1201(a)(7).

22 210. The State of the State of Delaware, or its political subdivisions, unaware of the falsity of
23 the claims and/or statements made by the Impac Defendants, and in reliance on the accuracy of these
24 claims and/or statements, paid, and may continue to pay, for pension benefits funded by the State of
25 Delaware.

26 211. As a result of the Impac Defendants' actions, as set forth above, the State of Delaware
27 and/or its political subdivisions have been, and may continue to be, severely damaged.
28

COUNT VII

(Violation of District of Columbia False Claims Act)

212. Relator incorporates herein by reference the preceding paragraphs of this Complaint as though fully set forth herein.

213. This is a civil action brought by Relator, on behalf of the District of Columbia, against the Impac Defendants under the District of Columbia False Claims Act, D.C. Code § 2-308.15(b).

214. In the District of Columbia, the relevant pension funds include the District of Columbia Police & Fire, and the District of Columbia Teachers pension funds. These funds invested heavily in the Impac Defendants.

215. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly presented, or caused to be presented, and may still be presenting or causing to be presented, to an officer or employee of the District, or its political subdivisions, false or fraudulent claims for payment or approval, in violation of D.C. Code § 2-308.14(a)(1).

216. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made, used, or caused to be used, and may still be making, using, or causing to be made or used, false records or statements to get false claims paid or approved by the District, or its political subdivisions, in violation of D.C. Code § 2-308.14(a)(2).

217. The Impac Defendants conspired with numerous entities to prepare and deliver inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other business entities, in violation of D.C. Code § 2-308.14(a)(3).

218. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made, used, or caused to be made or used, and may still be making, using, or causing to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money to the District, or its political subdivisions, in violation of D.C. Code § 2-308.14(a)(7).

219. The District of Columbia, or its political subdivisions, unaware of the falsity of the claims and/or statements made by the Impac Defendants, and in reliance upon the accuracy of these claims and/or statements, paid, and may continue to pay, for recipients of pension programs funded by the District and/or by its political subdivisions.

COUNT VIII

221. Relator incorporates herein by reference the preceding paragraphs of this Complaint as though fully set forth herein.

223. In the State of Florida, the relevant funds are consolidated through the Florida Division of Retirement and the Florida Retirement System. These funds invested heavily in the Impact Defendants.

225. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made, used, or caused to be made or used, and may still be making, using or causing to be made or used, false records or statements to get false or fraudulent claims paid or approved by the State of Florida, or its agencies, in violation of Fla. Stat. § 68.082(2)(b).

227. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made, used or caused to be made or used, and may still be making, using or causing to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money to the State of Florida, or its agencies, in violation of Fla. Stat. § 68.082(2)(g).

229. As a result of the Impac Defendants' actions, as set forth above, the State of Florida and/or its agencies have been, and may continue to be, severely damaged.

(Violation of Hawaii False Claims Act)

231. This is a civil action brought by Relator, on behalf of the State of Hawaii, against the Impac Defendants under the Hawaii False Claim Act, Haw. Rev. Stat. § 661-25.

233. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly presented or caused to be presented, and may still be presenting or causing to be presented, to an officer or employee of the State of Hawaii, or its political subdivisions, false or fraudulent claims for payment or approval, in violation of Haw. Rev. Stat. § 661-21(a)(1).

234. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made, used or caused to be made and used, and may still be making, using or causing to be made or used, false records or statements to get false or fraudulent claims paid or approved by the State of Hawaii, or its political subdivisions, in violation of Haw. Rev. Stat. § 661-21(a)(2).

236. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made, used or caused to be made or used, and may still be making, using or causing to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money to the State of Hawaii, or its political subdivisions, in violation of Haw. Rev. Stat. § 661-21(a)(7).

238. As a result of the Impac Defendants' actions, as set forth above, the State of Hawaii and/or its political subdivisions have been, and may continue to be, severely damaged.

(Violation of Illinois False Claims Act)

240. This is a civil action brought by Relator, on behalf of the State of Illinois, against the Impac Defendants under the Illinois False Claims Act, 740 Ill. Comp. Stat. 175/4(b).

1 Employees' Retirement Fund, and the Illinois Universities' fund. These funds invested heavily in the
2 Impac Defendants. Illinois is ranked first in the list of States most damaged by the changes in the
3 economy. The pension funds are expected to run out of money in the year 2018. Illinois will require an
4 infusion of \$13.6 billion in 2019 in order to make payments to State fund beneficiaries.

5 242. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
6 of the information involved, or with actual knowledge of the falsity of the information, knowingly
7 presented or caused to be presented, and may still be presenting or causing to be presented, false or
8 fraudulent claims for payment or approval, in violation of 740 Ill. Comp. Stat. 175/3(a)(1)(A).

9 243. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
10 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
11 used, or caused to be made or used, and may still be making, using, or causing to be made or used, false
12 records or statements material to get false or fraudulent claims paid or approved by the State of Illinois,
13 or its political subdivisions, in violation of 740 Ill. Comp. Stat. 175/3(a)(1)(B).

14 244. The Impac Defendants conspired with numerous entities to prepare and deliver
15 inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other
16 business entities in violation of 740 Ill. Comp. Stat. 175/3(a)(1)(C).

17 245. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
18 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
19 used, or caused to be made or used, and may still be making, using, or causing to be made or used, false
20 records or statements material to conceal, avoid or decrease an obligation to pay or transmit money to
21 the State of Illinois, or its political subdivisions, in violation of 740 Ill. Comp. Stat. 175/3(a)(1)(G).

22 246. The State of Illinois, or its political subdivisions, unaware of the falsity of the claims
23 and/or statements made by the Impac Defendants, and in reliance on the accuracy of those claims and/or
24 statements, paid, and may continue to pay, for pension programs funded by the State and/ or by its
25 political subdivisions.

26 247. As a result of the Impac Defendants' actions, as set forth above, the State of Illinois
27 and/or its political subdivisions have been, and may continue to be, severely damaged.
28

COUNT XI

(Violation of Indiana False Claims and Whistleblower Protection Act)

248. Relator incorporates herein by reference the preceding paragraphs of this Complaint as though fully set forth herein.

249. This is a civil action brought by Relator, on behalf of the State of Indiana, against the Impac Defendants under the Indiana False Claims and Whistleblower Protection Act, Ind. Code § 5-11-5.5-4(a).

250. In the State of Indiana, the relevant funds include the Indiana Public Employees' Retirement Fund and the Indiana Teachers' Retirement Fund. Indiana is ranked third in the list of States most damaged by changes in the economy. Indiana's pension funds are expected to run out of money in the year 2019. Indiana will require an infusion of \$3.6 billion in 2020 in order to make payments to State fund beneficiaries.

251. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly or intentionally presented, or caused to be presented, and may still be presenting or causing to be presented, false claims to the State of Indiana, or its political subdivisions, for payment or approval, in violation of Ind. Code § 5-11-5.5-2(b)(1).

252. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly or intentionally made, used, or caused to be made or used, and may still be making, using, or causing to be made or used, false records or statements to obtain payment or approval of false claims from the State of Indiana, or its political subdivisions, in violation of Ind. Code § 5-11-5.5-2(b)(2).

253. The Impac Defendants conspired with numerous entities to prepare and deliver inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other business entities, in violation of Ind. Code § 5-11-5.5-2(b)(7).

254. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly or intentionally made, used, or caused to be made or used, and may still be making, using, or causing to be

1 made or used, false records or statements to avoid an obligation to pay or transmit money to the State of
2 Indiana, or its political subdivisions, in violation of Ind. Code § 5-11-5.5-2(b)(6).

3 255. The State of Indiana, or its political subdivisions, unaware of the falsity of the claims
4 and/or statements made by the Impac Defendants, and in reliance on the accuracy of those claims and/or
5 statements, paid, and may continue to pay, for pension programs funded by the State and/or by its
6 political subdivisions.

7 256. As a result of the Impac Defendants' actions, as set forth above, the State of Indiana
8 and/or its political subdivisions have been, and may continue to be, severely damaged.

9 COUNT XII

10 *(Violation of Iowa False Claims Act)*

11 257. Relator incorporates herein by reference the preceding paragraphs of this Complaint as
12 though fully set forth herein.

13 258. This is a civil action brought by Relator, on behalf of the State of Iowa, against the Impac
14 Defendants under the Iowa False Claims Act, Iowa Code § 685.3(2)(a).

15 259. In the State of Iowa, the relevant State pension funds include the Iowa Public Employees
16 Retirement System ("IPERS"), which consists of retirement plans for various public employees. These
17 funds invested heavily in the Impac Defendants.

18 260. The Impac Defendants, in reckless disregard or deliberate ignorance for the truth or
19 falsity of the information involved, or with actual knowledge of the falsity of the information,
20 knowingly presented, or caused to be presented, and may still be presenting or causing to be presented,
21 false or fraudulent claims for payment or approval, in violation of Iowa Code § 685.2(1)(a).

22 261. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
23 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
24 used or caused to be made or used, and may still be making, using or causing to be made or used, false
25 records or statements material to false or fraudulent claims, in violation of Iowa Code § 685.2(1)(b).

26 262. The Impac Defendants conspired with numerous entities to prepare and deliver
27 inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other
28 business entities in violation of Iowa Code § 685.2(1)(c).

264. The State of Iowa, or its political subdivisions, unaware of the falsity of the claims and/or statements made by the Impac Defendants, and in reliance on the accuracy of these claims and/or statements, paid for pension programs funded by the State and/or its political subdivisions.

COUNT XIII

266. Relator incorporates herein by reference the preceding paragraphs of this Complaint as though fully set forth herein.

268. In the State of Minnesota, the relevant funds include the Minnesota Public Employee Retirement Association, the Minnesota Teachers' Retirement Association, the Minneapolis ERF, the Minnesota PERF, the Minnesota State Employees' fund, and the Minnesota Teachers' fund. These funds invested heavily in the Impac Defendants.

270. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made, used or caused to be made or used, and may still be making, using or causing to be made or used, false

1 records or statements to get false or fraudulent claim paid or approved by the State of Minnesota, or its
2 political subdivisions, in violation of Minn. Stat. § 15C.02(a)(2).

3 271. The Impac Defendants conspired with numerous entities to prepare and deliver
4 inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other
5 business entities, in violation of Minn. Stat. § 15C.02(a)(3).

6 272. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
7 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
8 used, or caused to be made or used, and may still be making, using or causing to be made or used, false
9 records or statements to conceal, avoid, or decrease an obligation to pay or transmit money to the State
10 of Minnesota, or its political subdivisions, in violation of Minn. Stat. § 15C.02(a)(7).

11 273. The State of Minnesota, or its political subdivisions, unaware of the falsity of the claims
12 and/or statements made by the Impac Defendants, and in reliance on the accuracy of these claims and/or
13 statements, paid State and State subdivision funds, and/or have failed to receive funds they are entitled
14 to receive from the Impac Defendants.

15 274. As a result of the Impac Defendants' actions, as set forth above, the State of Minnesota
16 and/or its political subdivisions have been, and may continue to be, severely damaged.

17 COUNT XIV

18 *(Violation of Montana False Claims Act)*

19 275. Relator incorporates herein by reference the preceding paragraphs of this Complaint as
20 though fully set forth herein.

21 276. This is a civil action brought by Relator, on behalf of the State of Montana against, the
22 Impac Defendants under the Montana False Claims Act, Mont. Code Ann. § 17-8-406(1).

23 277. In the State of Montana, the relevant State pension funds include the Montana Public
24 Employee Retirement Administration ("MPERA"), which consists of retirement plans for various
25 public employees. These funds invested heavily in the Impac Defendants.

26 278. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
27 of the information involved, or with actual knowledge of the falsity of the information, knowingly
28 presented or caused to be presented, and may still be presenting or causing to be presented, to an officer

1 or employee of the State of Montana, or its political subdivisions, false or fraudulent claims for payment
2 or approval, in violation of Mont. Code Ann. § 17-8-403(1)(a).

3 279. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
4 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
5 used or caused to be made or used, and may still be making, using or causing to be made or used, false
6 records or statements to get false or fraudulent claims paid or approved by the State of Montana, or its
7 political subdivisions, in violation of Mont. Code Ann. § 17-8-403(1)(b).

8 280. The Impac Defendants conspired with numerous entities to prepare and deliver
9 inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other
10 business entities, in violation of Mont. Code Ann. § 17-8-403(2)(c).

11 281. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
12 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
13 used, or caused to be made or used, and may still be making, using or causing to be made or used, false
14 records or statements to conceal, avoid, or decrease an obligation to pay or transmit money to the State
15 of Montana, or its political subdivisions, in violation of Mont. Code Ann. § 17-8-403(1)(g).

16 282. The State of Montana, or its political subdivisions, unaware of the falsity of the claims
17 and/or statements made by the Impac Defendants, and in reliance on the accuracy of these claims and/or
18 statements, paid, and may continue to pay, for recipients of pension programs funded by the State
19 and/or its political subdivisions.

20 283. As a result of the Impac Defendants' actions, as set forth above, the State of Montana
21 and/or its political subdivisions have been, and may continue to be, severely damaged.

22 COUNT XV.

23 *(Violation of Nevada False Claims Act)*

24 284. Relator incorporates herein by reference the preceding paragraphs of this Complaint as
25 though fully set forth herein.

26 285. This is a civil action brought by Relator, on behalf of the State of Nevada, against the
27 Impac Defendants under the Nevada False Claims Act, Nev. Rev. Stat. § 357.080(1).
28

1 286. In the State of Nevada, relevant funds include the Nevada Public Employees Retirement
2 System, the Nevada Police Officer and Firefighter fund, and the Nevada Regular Employees' fund,
3 among others. These funds invested heavily in the Impac Defendants.

4 287. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
5 of the information involved, or with actual knowledge of the falsity of the information, knowingly
6 presented or caused to be presented, and may still be presenting or causing to be presented, false claims
7 for payment or approval, in violation of Nev. Rev. Stat. § 357.040(1)(a).

8 288. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
9 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
10 used or caused to be made or used, and may still be making, using or causing to be made or used, false
11 records or statements to obtain payment or approval of false claims, in violation of Nev. Rev. Stat. §
12 357.040(1)(b).

13 289. The Impac Defendants conspired with numerous entities to prepare and deliver
14 inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other
15 business entities, in violation of Nev. Rev. Stat. §357.040(1)(c).

16 290. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
17 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
18 used, or caused to be made or used, and may still be making, using or causing to be made or used, false
19 records or statements to conceal, avoid, or decrease an obligation to pay or transmit money to the State
20 of Nevada, or its political subdivisions, in violation of Nev. Rev. Stat. § 357.040(1)(g).

21 291. The State of Nevada, or its political subdivisions, unaware of the falsity of the claims
22 and/or statements made by the Impac Defendants, and in reliance on the accuracy of these claims and/or
23 statements, paid, and may continue to pay, for recipients of pension programs funded by the State
24 and/or its political subdivisions.

25 292. As a result of the Impac Defendants' actions, as set forth above, the State of Nevada
26 and/or its political subdivisions have been, and may continue to be, severely damaged.

COUNT XVI

(Violation of New Jersey False Claims Act)

293. Relator incorporates herein by reference the preceding paragraphs of this Complaint as though fully set forth herein.

294. This is a civil action brought by Relator, on behalf of the State of New Jersey, against the Impac Defendants pursuant to the New Jersey Fraud False Claims Act, N.J. Stat. Ann. § 2A:32C-5(b).

295. In the State of New Jersey, the relevant funds include the New Jersey Division of Pensions and Benefits, New Jersey PERS PUC, New Jersey Police and Fire, and the New Jersey Teachers' fund. New Jersey ranks #4 on the list of State pension funds most damaged by changes in the economy. The funds are expected to run out of money in the year 2019. In the year 2020, the State will need an infusion of \$14.4 billion into its fund to enable it to continue paying State fund beneficiaries. These funds invested heavily in the Impac Defendants.

296. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly or intentionally presented or caused to be presented, and may still be presenting or causing to be presented, to an employee, officer or agent of the State of New Jersey, or to any contractor, grantee, or other recipient of State funds, false or fraudulent claims for payment or approval, in violation of N.J. Stat. Ann. § 2A:32C-3(a).

297. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made, used or caused to be made or used, and may still be making, using or causing to be made or used, false records or statements to get false or fraudulent claims paid or approved by the State of New Jersey, or its political subdivisions, in violation of N.J. Stat. Ann. § 2A:32C-3(b).

298. The Impac Defendants conspired with numerous entities to prepare and deliver inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other business entities, in violation of N.J. Stat. Ann. § 2A:32C-3(c).

299. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made,

1 used or caused to be made or used, and may still be making, using or causing to be made or used, false
2 records or statements to conceal, avoid, or decrease an obligation to pay or transmit money to the State
3 of New Jersey, or its political subdivisions, in violation of N.J. Stat. Ann. § 2A:32C-3(g).

4 300. The State of New Jersey, or its political subdivisions, unaware of the falsity of the claims
5 and/or statements made by the Impac Defendants, and in reliance on the accuracy of these claims and/or
6 statements, paid, and may continue to pay, for pensions funded by the State and/or by its political
7 subdivisions.

8 301. As a result of the Impac Defendants' actions, as set forth above, the State of New Jersey
9 and/or its political subdivisions have been, and may continue to be, severely damaged.

10 COUNT XVII

11 *(Violation of New Mexico Fraud Against Taxpayers Act)*

12 302. Relator incorporates herein by reference the preceding paragraphs of this Complaint as
13 though fully set forth herein.

14 303. This is a civil action brought by Relator, on behalf of the State of New Mexico, against
15 the Impac Defendants under the New Mexico Fraud Against Taxpayers Act. N.M. Stat. Ann. §§ 44-9-1
16 *et seq.*

17 304. In the State of New Mexico, the relevant funds include the New Mexico Education
18 Retirement Board, which manages pensions, the Public Employees Retirement Association of New
19 Mexico, and the New Mexico Teachers fund, among others. These funds invested heavily in the Impac
20 Defendants.

21 305. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
22 of the information involved, or with actual knowledge of the falsity of the information, knowingly
23 presented or caused to be presented, and may still be presenting or causing to be presented, false or
24 fraudulent claims for payment or approval, in violation of N.M. Stat. Ann. § 44-9-1(A)(1).

25 306. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
26 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
27 used or caused to be made or used, and may still be making, using or causing to be made or used, false
28

1 records or statements material to false or fraudulent claims, in violation of N.M. Stat. Ann. § 44-9-
2 1(A)(2).

3 307. The Impac Defendants conspired with numerous entities to prepare and deliver
4 inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other
5 business entities in violation of N.M. Stat. Ann. § 44-9-1(A)(3).

6 308. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
7 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
8 used, or caused to be made or used, and may still be making, using or causing to be made or used, false
9 records or statements to conceal, avoid, or decrease an obligation to pay or transmit money to the State
10 of New Mexico, or its political subdivisions, in violation of N.M. Stat. Ann. § 44-9-1(A)(4).

11 309. The State of New Mexico, or its political subdivisions, unaware of the falsity of the
12 claims and/or statements made by the Impac Defendants, and in reliance on the accuracy of these claims
13 and/or statements, paid, and may continue to pay, for recipients of pension programs funded by the State
14 and/or its political subdivisions.

15 310. As a result of the Impac Defendants' actions, as set forth above, the State of New Mexico
16 and/or its political subdivisions have been, and may continue to be, severely damaged.

17 COUNT XVIII

18 *(Violation of New York False Claims Act)*

19 311. Relator incorporates herein by reference the preceding paragraphs of this Complaint as
20 though fully set forth herein.

21 312. This is a civil action brought by Relator, on behalf of the State of New York, against the
22 Impac Defendants under the New York False Claims Act, N.Y. State Fin. Law § 190(2).

23 313. In the State of New York pension funds are managed by the *New York State Common*
24 *Retirement Fund*. The New York State Common Retirement Fund invested heavily in the Impac
25 Defendants.

26 314. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
27 of the information involved, or with actual knowledge of the falsity of the information, knowingly
28

1 presented or caused to be presented, and may still be presenting or causing to be presented, false or
2 fraudulent claims for payment or approval, in violation of N.Y. State Fin. Law § 189(1)(a).

3 315. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
4 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
5 used or caused to be made or used, and may still be making, using or causing to be made or used, false
6 records or statements material to false or fraudulent claims, in violation of N.Y. State Fin. Law §
7 189(1)(b).

8 316. The Impac Defendants conspired with numerous entities to prepare and deliver
9 inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other
10 business entities, in violation of N.Y. Fin. Law § 189(1)(c).

11 317. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
12 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
13 used, or caused to be made or used, and may still be making, using or causing to be made or used, false
14 records or statements material to an obligation to pay or transmit money to the State of New York, or its
15 political subdivisions, in violation of N.Y. State Fin. Law § 189(1)(g).

16 318. The State of New York, or its political subdivisions, unaware of the falsity of the claims
17 and/or statements made by the Impac Defendants, and in reliance on the accuracy of these claims and/or
18 statements, paid, and may continue to pay, for recipients of pension programs funded by the State and/or
19 its political subdivisions.

20 319. As a result of the Impac Defendants' actions, set forth above, the State of New York
21 and/or its political subdivisions have been, and may continue to be, severely damaged.

22 COUNT XIX

23 *(Violation of North Carolina False Claims Act)*

24 320. Relator incorporates herein by reference the preceding paragraphs of this Complaint as
25 though fully set forth herein.

26 321. This is a civil action brought by Relator, on behalf of the State of North Carolina, against
27 the Impac Defendants under the North Carolina False Claims Act, N.C. Gen. Stat. § 1-608(b).
28

1 322. In the State of North Carolina, the relevant funds include North Carolina Local
2 Government's pension fund and the North Carolina Teachers and State Employees fund. These funds
3 invested heavily in the Impac Defendants.

4 323. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
5 of the information involved, or with actual knowledge of the falsity of the information, knowingly
6 presented or caused to be presented, and may still be presenting or causing to be presented, false or
7 fraudulent claims for payment or approval, in violation of N.C. Gen. Stat. § 1-607(a)(1).

8 324. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
9 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
10 used or caused to be made or used, and may still be making, using or causing to be made or used, false
11 records or statements material to false or fraudulent claims, in violation of N.C. Gen. Stat. § 1-607(a)(2).

12 325. The Impac Defendants conspired with numerous entities to prepare and deliver
13 inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other
14 business entities in violation of N.C. Gen. Stat. § 1-607(a)(3).

15 326. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
16 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
17 used, or caused to be made or used, and may still be making, using or causing to be made or used, false
18 records or statements to conceal, avoid, or decrease an obligation to pay or transmit money to the State
19 of North Carolina, or its political subdivisions, in violation of N.C. Gen. Stat. § 1-607(a)(7).

20 327. The State of North Carolina, or its political subdivisions, unaware of the falsity of the
21 claims and/or statements made by the Impac Defendants, and in reliance on the accuracy of these claims
22 and/or statements, paid, and may continue to pay, for recipients of pension programs funded by the State
23 and/or its political subdivisions.

24 328. As a result of the Impac Defendants' actions, as set forth above, the State of North
25 Carolina and/or its political subdivisions have been, and may continue to be, severely damaged.

COUNT XX

(Violation of Rhode Island False Claims Act)

329. Relator incorporates herein by reference the preceding paragraphs of this Complaint as though fully set forth herein.

330. This is a civil action brought by Relator, on behalf of the State of Rhode Island, against the Impac Defendants pursuant to the Rhode Island False Claims Act, R.I. Gen. Laws § 9-1.1-4(b).

331. In the State of Rhode Island, the relevant funds are managed by the Employees' Retirement System and include Rhode Island Municipal, among other funds. These funds invested heavily in the Impac Defendants.

332. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly presented or caused to be presented, and may still be presenting or causing to be presented, to an officer or employee of the State of Rhode Island or a member of Rhode Island's National Guard, false or fraudulent claims for payment or approval, in violation of R.I. Gen. Laws § 9-1.1-3(a)(1).

333. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made or caused to be made, and may still be making or causing to be made, false records or statements to get false or fraudulent claims paid or approved by the State of Rhode Island, or its political subdivisions, in violation of R.I. Gen. Laws § 9-1.1-3(a)(2).

334. The Impac Defendants conspired with numerous entities to prepare and deliver inaccurate reports to the State, including accounting firms, auditors, vendors, lawyers, and other business entities, in violation of R.I. Gen. Laws § 9-1.1-3(a)(3).

335. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made, used, or caused to be made or used, and may still be making, using or causing to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money to the State of Rhode Island, or its political subdivisions, in violation of R.I. Gen. Laws § 9-1.1-3(a)(7).

336. The State of Rhode Island, or its political subdivisions, unaware of the falsity of the claims and/or statements made by the Impac Defendants, and in reliance on the accuracy of these claims and/or statements, paid, and may continue to pay, for recipients of pension benefits funded by the State and/or its political subdivisions.

COUNT XXI

338. Relator incorporates herein by reference the preceding paragraphs of this Complaint as though fully set forth herein.

340. In the Commonwealth of Virginia, the State pension funds are managed by the Virginia Retirement System. The System invested heavily in the Impac Defendants.

342. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made, used, or caused to be made or used, and may still be making, using or causing to be made or used, false records or statements to get false or fraudulent claims paid or approved by the Commonwealth of Virginia, or its political subdivisions, in violation of Va. Code Ann. § 8.01-216.3(A)(2).

345. The Commonwealth of Virginia, or its political subdivisions, unaware of the falsity of the claims and/or statements made by the Impac Defendants, and in reliance upon the accuracy of these claims and/or statements, paid, and may continue to pay, for pension programs funded by the Commonwealth and/or its political subdivisions.

COUNT XXII

(Violation of Chicago Fraud Against Taxpayers Act)

348. This is a civil action brought by Relator, on behalf of the City of Chicago, against the Impac Defendants under the City of Chicago False Claims Act, Chicago Mun. Code § 1-22 *et seq.*

350. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly presented or caused to be presented, and may still be presenting or causing to be presented, to an officer or employee of the City of Chicago, or its political subdivisions, false or fraudulent claims for payment or approval, in violation of City of Chicago False Claims Act, Chicago Mun. Code § 1-22-020(1).

78

1 used, or caused to be made or used, and may still be making, using or causing to be made or used, false
2 records or statements to get false or fraudulent claims paid or approved by the City of Chicago, in
3 violation of City of Chicago False Claims Act, Chicago Mun. Code § 1-22-020(2).

4 352. The Impac Defendants conspired with numerous entities to prepare and deliver
5 inaccurate reports to the City, including accounting firms, auditors, vendors, lawyers, and other
6 business entities, in violation of City of Chicago False Claims Act, Chicago Mun. Code § 1-22-020(3).

7 353. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
8 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
9 used or caused to be made or used, and may still be making, using or causing to be made or used, false
10 records or statements to conceal, avoid, or decrease an obligation to pay or transmit money to the City of
11 Chicago, in violation of City of Chicago False Claims Act, Chicago Mun. Code § 1-22-020(4).

12 354. The City of Chicago, or its political subdivisions, unaware of the falsity of the claims
13 and/or statements made by the Impac Defendants, and in reliance upon the accuracy of these claims
14 and/or statements, paid, and may continue to pay, for recipients of pension programs funded by the City
15 and/or its political subdivisions.

16 355. As a result of the Impac Defendants' actions, as set forth above, the City of Chicago
17 and/or its political subdivisions have been, and may continue to be, severely damaged.

18 COUNT XXIII

19 *(Violation of Miami-Dade County Fraud Against Taxpayers Act)*

20 356. Relator incorporates herein by reference the preceding paragraphs of this Complaint as
21 though fully set forth herein.

22 357. This is a civil action brought by Relator, on behalf of the City of Miami-Dade County,
23 against the Impac Defendants under the City of Miami False Claims Act, Miami-Dade County False
24 Claims Ordinance Section 21-255 *et seq.*

25 358. In the City of Miami pension funds are managed by the *City of Miami* General
26 Employees' & Sanitation Employees' ("GESE") Retirement Trust, and the City of Miami Fire Fighters'
27 and Police Officers' Retirement Trust. These trusts invested heavily in the Impac Defendants.
28

1 359. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
2 of the information involved, or with actual knowledge of the falsity of the information, knowingly
3 presented or caused to be presented, and may still be presenting or causing to be presented, to an officer
4 or employee of the City of Miami-Dade County, or its political subdivisions, false or fraudulent claims
5 for payment or approval, in violation of City of Miami False Claims Act, Miami-Dade County False
6 Claims Ordinance Section 21-258(1)(a).

7 360. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
8 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
9 used, or caused to be made or used, and may still be making, using or causing to be made or used, false
10 records or statements to get false or fraudulent claims paid or approved by the City of Miami, in
11 violation of City of Miami-Dade County False Claims Ordinance Section 21-258(1)(b).

12 361. The Impac Defendants conspired with numerous entities to prepare and deliver
13 inaccurate reports to the City, including accounting firms, auditors, vendors, lawyers, and other
14 business entities, in violation of City of Miami False Claims Act, Miami-Dade County False Claims
15 Ordinance Section 21-258((1)(c).

16 362. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
17 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
18 used or caused to be made or used, and may still be making, using or causing to be made or used, false
19 records or statements to conceal, avoid, or decrease an obligation to pay or transmit money to the City of
20 Miami, in violation of City of Miami False Claims Act, Miami-Dade County False Claims Ordinance
21 Section 21-258(1)(d).

22 363. The City of Miami, or its political subdivisions, unaware of the falsity of the claims
23 and/or statements made by the Impac Defendants, and in reliance upon the accuracy of these claims
24 and/or statements, paid, and may continue to pay, for recipients of pension programs funded by the City
25 and/or its political subdivisions.

26 364. As a result of the Impac Defendants' actions, as set forth above, the City of Miami and/or
27 its political subdivisions have been, and may continue to be, severely damaged.
28

COUNT XXIV

(Violation of the New York City False Claims Act)

365. Relator incorporates herein by reference the preceding paragraphs of this Complaint as though fully set forth herein.

366. This is a civil action brought by Relator, on behalf of the City of New York, against the Impac Defendants under the City of New York False Claims Act, NYC Admin. Code §§ 7-803 *et seq.*

367. New York City governmental entities with investments in the Impac Defendants include the New York City Employee's Retirement System; the Teachers' Retirement System of the City of New York; the New York City Police Pension Fund; the New York City Fire Department Pension Fund; the New York City Board of Education Retirement System; the New York City Police Officers' Variable Supplements Fund; the New York City Police Superior Officers' Variable Supplements Fund; the New York City Firefighters' Variable Supplements Fund; the New York City Fire Officers' Variable Supplements Fund; Teachers' Retirement System of the City of New York Variable Annuity Funds; the City of New York Group Trust; and the New York City Deferred Compensation Plan. These funds invested heavily in the Impac Defendants.

368. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly presented or caused to be presented, and may still be presenting or causing to be presented, to an officer or employee of the City of New York, or its political subdivisions, false or fraudulent claims for payment or approval, in violation of City of New York False Claims Act, NYC Admin. Code § 7-803(a)(1).

369. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made, used, or caused to be made or used, and may still be making, using or causing to be made or used, false records or statements to get false or fraudulent claims paid or approved by the City of New York, in violation of City of New York False Claims Act, NYC Admin. Code § 7-803(a)(2).

370. The Impac Defendants conspired with numerous entities to prepare and deliver inaccurate reports to the City, including accounting firms, auditors, vendors, lawyers, and other business entities, in violation of City of New York False Claims Act, NYC Admin. Code § 7-803(a)(3).

372. The City of New York, or its political subdivisions, unaware of the falsity of the claims and/or statements made by the Impac Defendants, and in reliance upon the accuracy of these claims and/or statements, paid, and may continue to pay, for recipients of pension programs funded by the City and/or its political subdivisions.

COUNT XXV

374. Relator incorporates herein by reference the preceding paragraphs of this Complaint as though fully set forth herein.

376. In the City of San Francisco pension funds are managed by the San Francisco City & County Employees' Retirement System. The San Francisco City & County Employees' Retirement System invested heavily in the Impac Defendants.

1 payment or approval, in violation of City of San Francisco False Claims Act, San Francisco Admin.
2 Code §§ 7-803 *et seq.*

3 378. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
4 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
5 used, or caused to be made or used, and may still be making, using or causing to be made or used, false
6 records or statements to get false or fraudulent claims paid or approved by the City of San Francisco, in
7 violation of City of San Francisco False Claims Act, San Francisco Admin. Code §§ 7-803 *et seq.*

8 379. The Impac Defendants conspired with numerous entities to prepare and deliver
9 inaccurate reports to the City, including accounting firms, auditors, vendors, lawyers, and other
10 business entities, in violation of City of San Francisco False Claims Act, San Francisco Admin. Code §§
11 7-803 *et seq.*

12 380. The Impac Defendants, in reckless disregard or deliberate ignorance of the truth or falsity
13 of the information involved, or with actual knowledge of the falsity of the information, knowingly made,
14 used or caused to be made or used, and may still be making, using or causing to be made or used, false
15 records or statements to conceal, avoid, or decrease an obligation to pay or transmit money to the City of
16 San Francisco, in violation of City of San Francisco False Claims Act, San Francisco Admin. Code §§ 7-
17 803 *et seq.*

18 381. The City of San Francisco, or its political subdivisions, unaware of the falsity of the
19 claims and/or statements made by the Impac Defendants, and in reliance upon the accuracy of these
20 claims and/or statements, paid, and may continue to pay, for recipients of pension programs funded by
21 the City and/or its political subdivisions.

22 382. As a result of the Impac Defendants' actions, as set forth above, the City of San Francisco
23 and/or its political subdivisions have been, and may continue to be, severely damaged.

24 **WHEREFORE**, Relator prays for judgment against the Impac Defendants as follows:

25 That the Impac Defendants be ordered to cease and desist from submitting any more false claims,
26 or further violating 31 U.S.C. §§ 3729 *et seq.*; Cal. Gov't Code §§ 12650 *et seq.*; Del. Code Ann. tit. 6,
27 §§ 1201 *et seq.*; D.C. Code § 2-308.13 *et seq.*; Fla. Stat. §§ 68.081 *et seq.*; Haw. Rev. Stat. §§ 661-21 *et*
28 *seq.*; 740 Ill. Comp. Stat. §§ 175/1 *et seq.*; Ind. Code §§ 5-11-5.5 *et seq.*; Iowa Code §§ 685.1 *et seq.*;

1 Minn. Stat. § 15C.01 *et seq.*; Mont. Code Ann. §§ 17-8-401 *et seq.*; Nev. Rev. Stat. §§ 357.010 *et seq.*;
2 N.J. Stat. Ann. §§ 2A:32C-1 *et seq.*; N.M. Stat. Ann. §§ 44-9-1 *et seq.*; N.Y. State Fin. Law §§ 187 *et*
3 *seq.*; N.C. Gen. Stat. § 1-605 *et seq.*; Okla. Stat. tit. 63, §§ 5053 *et seq.*; R.I. Gen. Laws § 9-1.1-1 *et seq.*;
4 Va. Code Ann. §§ 8.01-216.1 *et seq.*; Chicago Code of Ordinances §§ 1-22-020(1)-(4), 1-22-020(7);
5 Miami-Dade County False Claims Ordinance Section 21-255 *et seq.*; NYC Admin. Code §§ 7-803 (a)
6 (1)-(a)(4), 7-803 (a)(7); and San Francisco Admin. Code §§ 7-803 *et seq.*

7 A. That judgment be entered against the Impac Defendants in the amount of each and every
8 false or fraudulent claim, multiplied as provided for in 31 U.S.C. § 3729(a), plus a civil penalty of not
9 less than five thousand five hundred dollars (\$5,500) or more than eleven thousand dollars (\$11,000) per
10 claim as provided by 31 U.S.C. § 3729(a), to the extent such multiplied penalties shall fairly compensate
11 the United States of America for losses resulting from the various schemes undertaken by the Impac
12 Defendants, together with penalties for specific claims to be identified at trial after full discovery;

13 B. That judgment be entered in Relator's favor and against the Impac Defendants in the
14 amount of the damages sustained by the State of California or its political subdivisions multiplied as
15 provided for in Cal. Gov't Code § 12651(a), plus a civil penalty of not less than five thousand dollars
16 (\$5,000) per claim or more than ten thousand dollars (\$10,000) per claim as provided by Cal. Gov't
17 Code § 12651(a), to the extent such penalties shall fairly compensate the State of California or its
18 political subdivisions for losses resulting from the various schemes undertaken by the Impac
19 Defendants, together with penalties for specific claims to be identified at trial after full discovery;

20 C. That judgment be entered in Relator's favor and against the Impac Defendants in the
21 amount of the damages sustained by the State of Delaware multiplied as provided for in Del. Code Ann.
22 tit. 6, § 1201(a), plus a civil penalty of not less than five thousand five hundred dollars (\$5,500) or more
23 than eleven thousand dollars (\$11,000) for each act in violation of the Delaware False Claims and
24 Reporting Act, as provided by Del. Code Ann. tit. 6, §1201(a), to the extent such multiplied penalties
25 shall fairly compensate the State of Delaware for losses resulting from the various schemes undertaken
26 by the Impac Defendants, together with penalties for specific claims to be identified at trial after full
27 discovery;

28

1 D. That judgment be entered in Relator's favor and against the Impac Defendants in the
2 amount of the damages sustained by the District of Columbia, multiplied as provided for in D.C. Code
3 § 2-308.14(a), plus a civil penalty of not less than five thousand dollars (\$5,000) or more than ten
4 thousand dollars (\$10,000) for each false claim, and the costs of this civil action brought to recover such
5 penalty and damages, as provided by D.C. Code § 2-308.14(a), to the extent such multiplied penalties
6 shall fairly compensate the District of Columbia for losses resulting from the various schemes
7 undertaken by the Impac Defendants, together with penalties for specific claims to be identified at trial
8 after full discovery;

9 E. That judgment be entered in Relator's favor and against the Impac Defendants in the
10 amount of the damages sustained by the State of Florida or its agencies multiplied as provided for in Fla.
11 Stat. § 68.082(2), plus a civil penalty of not less than five thousand five hundred dollars (\$5,500) or
12 more than eleven thousand dollars (\$11,000) for each false claim as provided by Fla. Stat. Ann.
13 § 68.082(2), to the extent such multiplied penalties shall fairly compensate the State of Florida or its
14 agencies for losses resulting from the various schemes undertaken by the Impac Defendants, together
15 with penalties for specific claims to be identified at trial after full discovery;

16 F. That judgment be entered in Relator's favor and against the Impac Defendants in the
17 amount of the damages sustained by the State of Hawaii, multiplied as provided for in Haw. Rev. Stat.
18 § 661-21(a), plus a civil penalty of not less than five thousand dollars (\$5,000) or more than ten
19 thousand dollars (\$10,000) as provided by Haw. Rev. Stat. § 661-21(a), to the extent such multiplied
20 penalties shall fairly compensate the State of Hawaii for losses resulting from the various schemes
21 undertaken by the Impac Defendants, together with penalties for specific claims to be identified at trial
22 after full discovery;

23 G. That judgment be entered in Relator's favor and against the Impac Defendants in the
24 amount of the damages sustained by the State of Illinois, multiplied as provided for in 740 Ill. Comp.
25 Stat. § 175/3(a)(1)(A), plus a civil penalty of not less than five thousand five hundred dollars (\$5,500) or
26 more than eleven thousand dollars (\$11,000), as provided by 740 Ill. Comp. Stat. § 175/3(a)(1)(A), and
27 the costs of this civil action as provided by 740 Ill. Comp. Stat. § 175/3(a)(1)(B), to the extent such
28 penalties shall fairly compensate the State of Illinois for losses resulting from the various schemes

1 undertaken by the Impac Defendants, together with penalties for specific claims to be identified at trial
2 after full discovery;

3 H. That judgment be entered in Relator's favor and against the Impac Defendants in the
4 amount of the damages sustained by the State of Indiana, multiplied as provided for in Ind. Code § 5-11-
5 5.5-2(b), plus a civil penalty of at least five thousand dollars (\$5,000) as provided by Ind. Code § 5-11-
6 5.5-2(b), to the extent such penalties shall fairly compensate the State of Indiana for losses resulting
7 from the various schemes undertaken by the Impac Defendants, together with penalties for specific
8 claims to be identified at trial after full discovery;

9 I. That judgment be entered in Relator's favor and against the Impac Defendants in the
10 amount of damages sustained by the State of Iowa, multiplied as provided for in Iowa Code § 685.2(1),
11 plus a civil penalty of not less than five thousand dollars (\$5,000) and not more than ten thousand
12 dollars (\$10,000), as provided by Iowa Code § 685.2(1), to the extent such multiplied penalties shall
13 fairly compensate the State of Iowa or its political subdivisions for losses resulting from the various
14 schemes undertaken by the Impac Defendants, together with penalties for specific claims to be identified
15 at trial after full discovery;

16 J. That judgment be entered in Relator's favor and against the Impac Defendants
17 for restitution to the State of Minnesota or its political subdivisions for the value of payments or benefits
18 provided as a result of the Impac Defendants' unlawful acts, plus a civil penalty of triple the amount of
19 damages suffered by Minnesota as a result of the Impac Defendants' unlawful conduct, as well as not
20 less than five thousand five hundred dollars (\$5,500) or more than eleven thousand dollars (\$11,000) per
21 claim, as provided by Minn. Stat. § 15C.02(a), as well as the costs incurred by both Michigan and
22 Relator, as provided by Minn. Stat. § 15C.12, in order to fairly compensate Minnesota or its political
23 subdivisions for losses resulting from the various schemes undertaken by the Impac Defendants,
24 together with penalties for specific claims to be identified at trial after full discovery;

25 K. That judgment be entered in Relator's favor and against the Impac Defendants
26 for restitution to the State of Montana or its political subdivisions for the value of payments or benefits
27 provided, directly or indirectly, as a result of the Impac Defendants' unlawful acts, as provided for in
28 Mont. Code Ann. § 17-8-403, multiplied as provided for in Mont. Code Ann. § 17-8-403(2), plus a civil

1 penalty of not less than five thousand dollars (\$5,000) or more than ten thousand dollars (\$10,000) for
2 each false claim, pursuant to Mont. Code Ann. § 17-8-403(2), to the extent such multiplied penalties
3 shall fairly compensate the State of Montana or its political subdivisions for losses resulting from the
4 various schemes undertaken by the Impac Defendants, together with penalties for specific claims to be
5 identified at trial after full discovery;

6 L. That judgment be entered in Relator's favor and against the Impac Defendants
7 for restitution to the State of Nevada for the value of payments or benefits provided, directly
8 or indirectly, as a result of the Impac Defendants' unlawful acts, as provided for in Nev. Rev. Stat.
9 § 357.040, multiplied as provided for in Nev. Rev. Stat. § 357.040(1), plus a civil penalty of not less
10 than five thousand dollars (\$5,000) or more than ten thousand dollars (\$10,000) for each act, pursuant to
11 Nev. Rev. Stat. § 357.040(1), to the extent such multiplied penalties shall fairly compensate the State of
12 Nevada for losses resulting from the various schemes undertaken by the Impac Defendants, together
13 with penalties for specific claims to be identified at trial after full discovery;

14 M. That judgment be entered in Relator's favor and against the Impac Defendants in the
15 amount of the damages sustained by the State of New Jersey or its political subdivisions multiplied as
16 provided for in N.J. Stat. Ann. § 2A:32C-3, plus a civil penalty of not less than and not more than the
17 civil penalties allowed under the Federal False Claims Act (31 U.S.C. § 3729 *et seq.*) for each false or
18 fraudulent claim, to the extent such multiplied penalties shall fairly compensate the State of New Jersey
19 or its political subdivisions for losses resulting from the various schemes undertaken by the Impac
20 Defendants, together with penalties for specific claims to be identified at trial after full discovery;

21 N. That judgment be entered in Relator's favor and against the Impac Defendants for
22 restitution to the State of New Mexico or its political subdivisions for the value of payments or benefits
23 provided, directly or indirectly, as a result of the Impac Defendants' unlawful acts, as provided for in
24 N.M. Stat. Ann. §§ 44-9-1(C)(1), multiplied as provided for in N.M. Stat. Ann. §§ 44-9-1(C)(2),
25 multiplied as provided for in N.M. Stat. Ann. §§ 44-9-1(C), plus a civil penalty of not less than six
26 thousand dollars (\$5,000) or more than twelve thousand dollars (\$10,000) for each false claim, pursuant
27 to N.M. Stat. Ann. §§ 44-9-1(C)(2), to the extent such multiplied penalties shall fairly compensate the
28 State of New Mexico or its political subdivisions for losses resulting from the various schemes

1 undertaken by the Impac Defendants, together with penalties for specific claims to be identified at trial
2 after full discovery;

3 O. That judgment be entered in Relator's favor and against the Impac Defendants
4 for restitution to the State of New York or its political subdivisions for the value of payments or benefits
5 provided, directly or indirectly, as a result of the Impac Defendants' unlawful acts, as provided for in
6 N.Y. State Fin. Law § 189(1), multiplied as provided for in N.Y. State Fin. Law § 189(1), plus a civil
7 penalty of not less than six thousand dollars (\$6,000) or more than twelve thousand dollars (\$12,000) for
8 each false claim, pursuant to N.Y. State Fin. Law § 189(1), to the extent such multiplied penalties shall
9 fairly compensate the State of New York or its political subdivisions for losses resulting from the
10 various schemes undertaken by the Impac Defendants, together with penalties for specific claims to be
11 identified at trial after full discovery;

12 P. That judgment be entered in Relator's favor and against the Impac Defendants
13 for restitution to the State of North Carolina for the value of payments or benefits provided, directly
14 or indirectly, as a result of the Impac Defendants' unlawful acts, as provided for in N.C. Gen. Stat. § 1-
15 607, multiplied as provided for in N.C. Gen. Stat. § 1-607(a), plus a civil penalty of not less than five
16 thousand five hundred dollars (\$5,500) or more than eleven thousand dollars (\$11,000) as provided by
17 N.C. Gen. Stat. § 1-607(a), to the extent such multiplied penalties shall fairly compensate the State of
18 North Carolina for losses resulting from the various schemes undertaken by the Impac Defendants,
19 together with penalties for specific claims to be identified at trial after full discovery;

20 Q. That judgment be entered in Relator's favor and against the Impac Defendants in the
21 amount of the damages sustained by the State of Rhode Island or its political subdivisions multiplied as
22 provided for in R.I. Gen. Laws § 9-1.1-3(a), plus a civil penalty of not less than five thousand dollars
23 (\$5,000) or more than ten thousand dollars (\$10,000) per claim as provided by R.I. Gen. Laws § 9-1.1-
24 3(a), to the extent such multiplied penalties shall fairly compensate the State of Rhode Island or its
25 political subdivisions for losses resulting from the various schemes undertaken by the Impac
26 Defendants, together with penalties for specific claims to be identified at trial after full discovery;

27 R. That judgment be entered in Relator's favor and against the Impac Defendants in the
28 amount of the damages sustained by the Commonwealth of Virginia, multiplied as provided for in Va.

1 Code Ann. § 8.01-216.3(A), plus a civil penalty of not less than five thousand five hundred dollars
2 (\$5,500) or more than eleven thousand dollars (\$11,000) as provided by Va. Code Ann. § 8.01-216.3(A),
3 to the extent such multiplied penalties shall fairly compensate the Commonwealth of Virginia for losses
4 resulting from the various schemes undertaken by the Impac Defendants, together with penalties for
5 specific claims to be identified at trial after full discovery;

6 S. That judgment be entered in Relator's favor and against the Impac Defendants in the
7 amount of the damages sustained by the City of Chicago, multiplied as provided for in Chicago Mun.
8 Code § 1-22-020, plus a civil penalty of not less than five thousand five hundred dollars (\$5,000) or
9 more than eleven thousand dollars (\$10,000) as provided by Chicago Mun. Code § 1-22-020, to the
10 extent such multiplied penalties shall fairly compensate the City of Chicago for losses resulting from the
11 various schemes undertaken by the Impac Defendants, together with penalties for specific claims to be
12 identified at trial after full discovery;

13 T. That judgment be entered in Relator's favor and against the Impac Defendants in the
14 amount of the damages sustained by the City of Miami-Dade County, multiplied as provided for in
15 Miami-Dade County False Claims Ordinance Section 21-258(3), plus a civil penalty of not less than five
16 thousand five hundred dollars (\$5,500) or more than eleven thousand dollars (\$11,000) as provided by
17 Miami-Dade County False Claims Ordinance Section 21-257, to the extent such multiplied penalties
18 shall fairly compensate the City of Miami-Dade County for losses resulting from the various schemes
19 undertaken by the Impac Defendants, together with penalties for specific claims to be identified at trial
20 after full discovery;

21 U. That judgment be entered in Relator's favor and against the Impac Defendants in the
22 amount of the damages sustained by the City of New York, multiplied as provided for in NYC Admin.
23 Code §§ 7-803, plus a civil penalty of not less than five thousand five hundred dollars (\$5,000) or more
24 than eleven thousand dollars (\$15,000) as provided by NYC Admin. Code §§ 7-803 to the extent such
25 multiplied penalties shall fairly compensate the City of New York for losses resulting from the various
26 schemes undertaken by the Impac Defendants, together with What abpenalties for specific claims to be
27 identified at trial after full discovery;

1 V. That judgment be entered in Relator's favor and against the Impac Defendants in the
2 amount of the damages sustained by the City of San Francisco, multiplied as provided for in San
3 Francisco Admin. Code §§ 7-803 *et seq*, plus a civil penalty of not less than five thousand five hundred
4 dollars (\$5,500) or more than eleven thousand dollars (\$11,000) as provided by San Francisco Admin.
5 Code §§ 7-803 *et seq*, to the extent such multiplied penalties shall fairly compensate the City of San
6 Francisco for losses resulting from the various schemes undertaken by the Impac Defendants, together
7 with penalties for specific claims to be identified at trial after full discovery.

8 W. That the Impac Defendants be ordered to disgorge all sums by which they have been
9 enriched unjustly by their wrongful conduct;

10 X. That judgment be granted for Relator against the Impac Defendants for all costs,
11 including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Relator in the
12 prosecution of this suit; and

13 Y. That Relator be granted such other and further relief as the Court deems just and proper.

14
15 JURY TRIAL DEMAND

16
17 Relator demands a trial by jury of all issues so triable.

18
19 DATED: November 1, 2016

Respectfully submitted,

20
21 HELLMICH LAW GROUP, P.C.

22
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Attorneys for Relator

"Exhibit D"



Property Report by PropertyShark.com

Property Report for:

113 Chauncey St, Brooklyn, NY 11233

B. Overview

B1. Overview

Address

Primary address **113 Chauncey St**
 Zip code **11233**
 Borough **Brooklyn**
 Block & lot **01686-0076**
 Sanborn map **305 059**
 Tax map **30607**

Owner

Name **113 Chauncey Street Realty LLC**
 Address **29 Viola Dr
Glen Cove, NY 11542**
 Purchase date **04/02/2018**
 Purchase price **\$0**

Property Taxes

Tax class **1**
 Tax assessor's market value **\$1,328,000**
 Projected tax assessor's market value **\$1,291,000**
 Current tax bill **\$4,301**
 Projected tax bill **\$4,321**


Neighborhood

Neighborhood **Bedford-Stuyvesant**
 Community district **3**
 Closest Police station **0.37 Miles**
 Closest Fire station **0.35 Miles**
 School district number **16**
 Census tract **297**

Hazards & Environment

Toxic site on this property **No**
 Neighboring toxic sites **8**

Building

Building class **Two Family Brick (B1) **
 Building sqft **2,088**
 Building dimensions **16.67 ft x 42 ft**
 Roof height **31 ft**
 Ground elevation **59 ft**
 Year built **1899 (estimated)**
 Stories **2**
 Proximity **2-side abutted**
 Style **Brownstone**
 Construction type **Brick**
 Exterior wall **Masonry**
 Exterior condition **Average**
 Basement type **Full**
 Basement sqft **708**
 Basement grade **Above grade**

Use

Residential units **2**
 Residential sqft **1,380**
 Average residential unit size **690**
 Certificate(s) of occupancy **[Click here !\[\]\(799877f5c2f906134441300079881630_img.jpg\)](#)**


Lot

Lot sqft **1,667 **
 Lot type **Inside**
 Lot shape **Regular**
 Lot dimensions **16.67 ft x 100 ft**
 Corner lot **No**
 Buildings on lot **1**

Zoning

Zoning districts **R6B **
 Zoning map **17a**
 Historic district **Bedford
Stuyvesant/Expanded
Stuyvesant Heights**

Floor Area Ratio (FAR)

Residential FAR **2**
 Facility FAR **2**
 FAR as built **1.25 **
 Allowed usable floor area **3,334**
 Usable floor area as built **2,084**
 Unused FAR **1,250**

Violations

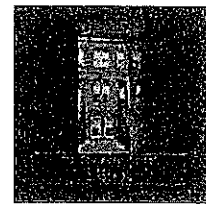
DOB violations **1**
 ECB violations **1**

B2. NEW Real Owners & Mortgages

B3. Photos

Open Google Street View

Upload photos for this property



Uploaded in April, 2012 by Christopher Bride

B6. Sale & Property History

Date	Event	Amount	Details
8/1/2011	Deed transfer recorded	\$643,000	
10/22/2010	Deed transfer recorded	\$225,000	
9/17/2010	Lis pendens filed	\$570,000	
9/17/2010	Lis pendens filed	\$570,000	
9/17/2007	Lis pendens filed	\$427,500	
8/23/2007	Lis pendens filed	\$570,000	
1/31/2007	Deed transfer recorded	\$600,000	

C. Ownership

C1. Registered Owner

113 Chauncey Street Realty LLC

29 Viola Dr

Glen Cove, NY 11542

Source: Deed

Last recorded: 04/02/2018



Phone Lookup



Add to Address Book

Ownership data is aggregated from governmental sources like deeds and the assessment roll. If the registered owner is a LLC or other form of company, use our Real Owners service to find the person behind the company.

F. Sales & Value

F1. Neighborhood Price History

Median price/sqft \$505
Neighboring properties 23

Recent sales of similar properties

Address	Sale price	Sale date	Sqft	Price/sqft
302 Herkimer St	\$1,900,000	11/27/2017	2,268	\$837
779 Putnam Ave	\$1,900,000	8/15/2017	2,400	\$791
116 Decatur St	\$1,899,000	8/16/2017	2,400	\$791
357 Decatur St	\$1,700,000	4/2/2018	2,168	\$784
298 Herkimer St	\$1,725,000	5/25/2017	2,268	\$760
121 Malcolm X Blvd	\$1,715,000	1/12/2018	2,400	\$714
380 Herkimer St	\$1,531,600	3/20/2017	2,205	\$694
333 Stuyvesant Ave	\$1,355,000	9/22/2017	2,025	\$669
1022 Putnam Ave	\$1,500,000	3/12/2018	2,295	\$653
314 Decatur St	\$1,325,000	8/21/2017	2,100	\$630

Use our Comparable Sales Tool to select your own list of recent sales, or read our Market Reports for an analysis of sale prices across a neighborhood.

G. Property Tax

G7. Assessment History

Year	Building class	Market value	Assessed value	Taxable	Tax rate%	Base tax	Property tax
2017/18	B1	\$1,328,000	\$21,099	\$21,099	20.385%	\$4,301	\$4,301
2016/17	B1	\$984,000	\$19,905	\$19,905	19.991%	\$3,979	\$3,979
2015/16	B1	\$812,000	\$19,830	\$19,830	19.554%	\$3,878	\$3,878
2014/15	B1	\$710,000	\$18,709	\$18,709	19.157%	\$3,584	\$3,584
2013/14	B1	\$649,000	\$17,665	\$16,065	19.191%	\$3,390	\$3,083
2012/13	B1	\$556,000	\$17,583	\$15,913	18.569%	\$3,265	\$2,955
2011/12	B1	\$463,000	\$16,588	\$16,588	18.205%	\$3,020	\$3,020
2010/11	B1	\$505,000	\$16,525	\$16,525	17.364%	\$2,869	\$2,869
2009/10	B1	\$563,000	\$15,591	\$15,591	17.088%	\$2,664	\$2,664
2008/09	B1	\$481,000	\$14,721	\$14,721	16.196%	\$2,384	\$2,384
2007/08	B1	\$490,295	\$14,653	\$14,653	15.434%	\$2,262	\$2,262
2006/07	B1	\$516,100	\$13,824	\$11,264	16.118%	\$2,228	\$1,816
2005/06	B1	\$378,100	\$13,771	\$11,401	15.746%	\$2,168	\$1,795
2004/05	B1	\$365,000	\$12,993	\$10,503	15.094%	\$1,961	\$1,585
2003/04	B1	\$309,000	\$12,268	\$9,658	14.55%	\$1,785	\$1,405

Disclaimer

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"Exhibit E"

To Be Argued By:
MARGARET GANDY

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket Nos. 14-2182(L), 14-2282(CON)

UNITED STATES OF AMERICA,

Appellee,

-against-

BIBI OMAR, also known as ZAMEENA OMAR, KIM RAMLOCHAN,
also known as KIM CUPELES, also known as KIM YOHAY,
SHANE BROWNE,

Defendants,

CASSANDRA CEAN,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

THE GOVERNMENT'S OPPOSITION TO CEAN'S MOTION
TO RECALL THE MANDATE AND APPENDIX

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UNITED STATES COURT OF APPEALS

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FOR THE EASTERN DISTRICT OF NEW YORK

THE GOVERNMENT'S OPPOSITION TO CEAN'S
MOTION TO RECALL THE MANDATE

PRELIMINARY STATEMENT

Cassandra Cean was convicted in the Eastern District of New York after a jury trial before The Honorable Sterling Johnson, Jr., of conspiracy to commit wire fraud, in violation of 18 U.S.C. §§ 1343 and 1349, and four counts of wire fraud, in violation of

18 U.S.C. § 1343. Cean was sentenced, principally, to 87 months' imprisonment, three years' supervised release and restitution of \$1,205,355.00. This Court affirmed her conviction and sentence on direct appeal, but remanded for the limited purpose of entering a revised restitution order. See United States v. Browne (Cean), No. 14-2282(CON), 621 F. App'x 44 (2d Cir. 2015), cert. denied, 136 S. Ct. 863 (2016). This Court issued its mandate on September 24, 2015.

Upon remand, Judge Johnson referred the matter to Magistrate Judge Ramon E. Reyes, Jr., who held a two-day hearing on the issue of restitution. After the hearing was completed, but before Judge Reyes had recommended any findings, Cean filed the instant Motion to Recall the Mandate on September 16, 2016. On December 2, 2016, Judge Reyes issued a Report and Recommendation ("R&R") recommending that the defendants be ordered to pay \$243,148.51 in restitution to Impac Funding Corp. On January 16, 2018, Judge Johnson filed an Order adopting Judge Reyes's R&R in its entirety.

When Cean filed the instant motion, the grounds upon which she premised her argument were anticipatory - namely, that a sentencing error would be revealed if, as she expected, the revised restitution order deviated from the loss amount adopted by the district court under the United States Sentencing Guidelines

("U.S.S.G." or "Guidelines") at sentencing. While the revised restitution amount is significantly lower than the loss amount adopted at sentencing, for the reasons set forth below, Cean is not entitled to the relief she seeks and her motion should be denied.

STATEMENT OF FACTS¹

I. Offense Conduct

Beginning in 2005, Shane Browne, Cean and others engaged in a mortgage fraud scheme by assisting unqualified straw buyers with good credit scores to obtain loans to purchase homes. Browne orchestrated these fraudulent transactions by recruiting the straw buyers and, in some instances, acquiring the properties used in the fraudulent transactions by paying a modest fee to distressed homeowners who were facing foreclosure. Once a straw buyer had been recruited, a loan processor would complete a loan application using falsified information about the straw buyer's financial profile and intention to live in the house. Cean, an attorney, served as the closing agent for the fraudulent transactions, received the fraudulently obtained loan proceeds from the lender, and then distributed the money among the co-conspirators at Browne's direction.

II. Conviction at Trial

On September 4, 2012, a grand jury sitting in the Eastern District of New York returned a six-count superseding indictment charging Browne, Cean, Bibi Omar and Kim Ramlochan with conspiracy

¹ A more complete description of the facts of this case is contained in the government's brief on direct appeal at pp. 4-49. See USA v. Browne, et al., Dkt. Nos. 14-2182(L), 14-2282(CON), "COA Dkt." No. 134 (Brief)).

to commit wire fraud, and Browne, Cean and Ramlochan with five substantive counts of wire fraud. (USA v. Browne, et al., 11-cr-449(SJ), "EDNY Dkt." No. 56). On October 9, 2013, the jury convicted Cean on the conspiracy count and four substantive counts; she was acquitted on an additional substantive count. (EDNY Dkt. No. 155).

III. Sentencing

The presentence investigation report prepared by the United States Probation Department for Cean ("CPSR") included a Guidelines sentencing range of 70 to 87 months. (CPSR ¶¶ 60, 94).² This was arrived at by employing a base offense level of 7 under U.S.S.G. § 2B1.1(a)(1), which was enhanced by 16 levels under U.S.S.G. § 2B1.1(b)(1)(I) for losses of more than \$1,000,000, two levels under U.S.S.G. § 3B1.3 for Cean's abuse of her position as an attorney to further the offense, and two levels under U.S.S.G. § 3C1.1 for obstruction of justice based on Cean's false trial testimony. (CPSR ¶¶ 38, 41-42). The CPSR also calculated restitution at \$1,205,355, claiming losses of \$345,000, \$851,355, and \$9,000 for Impac, Funding Corp. and WMC Mortgage, respectively. (CPSR ¶¶ 23, 106).

² A copy of Cean's presentence investigation report was filed under seal in connection with Cean's direct appeal.

Cean was sentenced on May 9, 2014. (EDNY Dkt. No. 204). During the proceeding, and in her written submission, Cean objected to the loss amount set forth in the CPSR and posited that the losses were actually \$504,000. (CA 80).³ Cean also requested a Fatico hearing to compel the government to provide more accurate fair market values for the relevant properties. (CA 85-86).

The district court declined to hold a Fatico hearing and adopted an intended loss approach in determining the total loss under the Guidelines, stating:

There's a dispute over whether the amount of money involved was 500 some thousand dollars or over a million dollars. [U.S.S.G. §] 2B1.1 addresses that issue. 2B1.1 says that in instances such as this, the amount to be determined will be the actual amount or the intended amount, whichever is greater. I find specifically that the government has proven that the intended amount is over one million dollars, so I think 16 points is proper in this case.

(CA 100).

The district court then imposed a sentence of 87 months' imprisonment, three years' supervised release, \$1,205,355 in restitution, a \$500 special assessment and forfeiture of

³ "CA" refers to Cean's appendix filed in connection with her direct appeal; "MCA" refers to the appendix Cean filed in connection with her Declaration in Support of her Motion to Recall the Mandate ("Dec."); "MGA" refers to the government's appendix filed in connection with its response to Cean's Motion to Recall the Mandate.

\$43,700.57. (CA 101-02). In doing so, the court stated that it had "examined the submissions, listened to the arguments of counsel and . . . I think that a sentence that is sufficient but not greater than necessary is the one I'm going to pronounce." (CA 101).

IV. Direct Appeal

On direct appeal, Cean argued that (1) the government's proof at trial resulted in a constructive amendment of the indictment; (2) evidence of the co-conspirators' efforts to conceal criminal conduct was improperly admitted and unduly prejudicial; (3) the government's cross-examination of Cean improperly included purported Federal Rule of Evidence 404(b) material that was supported by inadmissible hearsay; (4) the district court should have granted Cean's motion for a new trial or held an evidentiary hearing based on juror misconduct; and (5) the sentence imposed was both procedurally and substantively unreasonable. (See COA Dkt. No. 62 (Brief at 92-99)).⁴

More specifically, with respect to her claim that the sentence was procedurally unreasonable, Cean argued that the district court failed to properly consider certain mitigating

⁴ On direct appeal, Cean did not object to the restitution order in her initial brief, but later sought by letter to join in co-defendant Shane Browne's challenge to the order of restitution. (See COA Dkt. No. 161).

factors, failed to consider sentencing disparities among co-defendants, and improperly applied an obstruction of justice enhancement. (COA Dkt. No. 62 (Brief at 92-99)). Notably, Cean did not challenge the loss calculation adopted by the district court, or the court's failure to hold a Fatico hearing.

This Court heard oral argument on August 18, 2015, and, on August 24, 2015, affirmed Cean's conviction and sentence, but remanded to the district court to correct errors related to the restitution order. (See COA Dkt. Nos. 165, 168; MGA 14-19). On September 24, 2015, the judgment mandate was issued. (See COA Dkt. No. 176; MCA 1-6).

Thereafter, on November 23, 2015, Cean filed a petition for a writ of certiorari. (COA Dkt. No. 180). On January 11, 2016, Cean's petition was denied. (COA Dkt. No. 181).

V. Remand to District Court

Upon remand by this Court, the district court referred the matter to Magistrate Judge Reyes, who presided over a two-day hearing on the issue of restitution on November 16, 2015 and December 8, 2015. (EDNY Dkt., dated entries for November 16, 2015 and December 8, 2015).

In a written submission prior to the hearing, the government noted that only one of the entities on whose behalf the government was seeking restitution - Impac Funding Corp. - was

among the original lenders of the fraudulently obtained mortgages upon which the conviction was based; the other lenders were third-party entities that held successor interest in the loans. (EDNY Dkt. No. 247; MGA 25-26).

In a post-hearing submission, Cean argued that no restitution was warranted as the government had failed to prove "the identity of each alleged victim, the precise amount of restitution due them, and how any loss suffered . . . was caused by misrepresentations." (See EDNY Dkt. No. 268; MCA 112 (emphasis in original)).

The government argued that restitution was due to the following victims in the following amounts: (a) at least \$243,148.51 to Impac Secured Asset Series 2007-2 Trust (payable to master servicer); (b) at least \$100,515.22 to the Pennymac Trust (payable to servicer); and (c) at least \$72,726.89 to Santander (payable to servicer). The government also noted that additional entities that might have had viable claims for restitution had declined to seek restitution, at least in part to avoid revealing proprietary information. (See EDNY Dkt. No. 267; MCA 248-77).

On December 2, 2016, Magistrate Judge Reyes issued an R&R recommending that the district court order Cean and her two co-defendants to pay restitution totaling \$243,148.51 to Impac Secured Asset Series 2007-2 Trust, along with prejudgment interest

based on prevailing interest rates (payable to Impac Funding Corp.). Magistrate Judge Reyes recommended that neither Santander Bank N.A. nor Pennymac Loan Trust be afforded restitution because the government had not proven that Santander Bank N.A. suffered a loss (although Judge Reyes did recognize the entity as a victim),⁵ and because Pennymac Loan Trust was neither a victim nor had it suffered any identifiable loss. (EDNY Dkt. No. 295; MCA 34-49).

On December 14, 2016, PennyMac Loan Services, LLC, as servicer for PennyMac Loan Trust 2011-NPL-1, filed an objection to the R&R as a non-party victim. (EDNY Dkt. No. 297; MGA 30-40). On December 15, 2016, Cean filed an objection to the R&R insofar as it awarded restitution to Impac Funding Corp. and found that Santander Bank was a victim. (EDNY Dkt. No. 299; MGA 41-47).

The district court adopted the R&R in its entirety by Order dated January 16, 2018, thereby dismissing the objections. (EDNY Dkt. No. 318; MGA 50-55).

On January 22, 2018, Cean filed a notice of appeal with respect to the district court's adoption of the R&R. (EDNY Dkt. No. 320).

⁵ Of note, shortly before Magistrate Judge Reyes issued his R&R, Santander Bank N.A. withdrew its request for restitution after Judge Reyes made clear his intention to publish the purchase prices paid for the relevant loans by any entity seeking restitution. (EDNY Dkt. No. 294).

VI. Motion to Recall Mandate

On September 16, 2016, Cean's counsel filed the instant Motion to Recall the Mandate ("Mtn."), contending that Cean expected the restitution amount to change significantly in the district court and arguing that such a change would demonstrate significant errors in the district court's initial loss calculations. (See COA Dkt. No. 193). On October 3, 2016, this Court granted the government an extension of time to respond to that motion. (See COA Dkt. No. 199). Specifically, the Court granted the government's request that it be permitted to file its response within 30 days of the district court's filing of any revised restitution order. (See COA Dkt. Nos. 195, 199). On December 5, 2017, Cean supplemented her counsel's motion with a Declaration in Support of Motion to Recall Mandate ("Dec."), which expanded on arguments raised in the initial motion. (See COA Dkt. Nos. 204, 205).⁶

On January 11, 2018, the government filed a letter informing the Court that Magistrate Judge Reyes had filed the R&R on December 2, 2016, and that the district court had yet to adopt the R&R or otherwise rule on the matter. (See COA Dkt. No. 225). By order dated January 19, 2018, this Court denied Cean's motion

⁶ A second copy of Cean's materials was filed on December 28, 2017. (COA Dkt. No. 223).

to recall the mandate, without prejudice to reinstatement if the district court did not act on the pending R&R by March 2, 2018. (COA Dkt. No. 299; MGA 41-47).

The district court adopted the R&R in its entirety on January 16, 2018. (EDNY Dkt. No. 318; MGA 50-55). By letter dated January 27, 2018, Cean sought clarification of the status of her motion and confirmation of the date by which the government was to respond. (COA Dkt. No. 231). By letter dated February 14, 2018, the government likewise sought clarification and an extension of time within which to file its response. (COA Dkt. No. 233). On March 12, 2018, the Court granted the government's motion for an extension of time and clarified that the government's response should address Cean's September 16, 2016 motion only. (COA Dkt. No. 242).

ARGUMENT

THE MOTION TO RECALL THE MANDATE SHOULD BE DENIED

I. Cean Cannot Demonstrate Entitlement to the Recall Remedy

While the Court has inherent power to recall its mandate, it exercises that authority sparingly. The Supreme Court has described recalling the mandate as a remedy "of last resort, to be held in reserve against grave, unforeseen contingencies." Calderon v. Thompson, 523 U.S. 538, 550 (1998). The sparing exercise of the power protects "the profound interests in repose attaching to the mandate of a court of appeals." Id. (internal quotation marks and citation omitted). Accordingly, this Court has held that it will recall its mandate only in "'extraordinary circumstances.'" Bottone v. United States, 350 F.3d 59, 62 (2d Cir. 2003) (quoting Calderon, 523 U.S. at 550). "The reason for parsimony in the exercise of our power to recall a mandate is the need to preserve finality in judicial proceedings." Sargent v. Columbia Forest Products, Inc., 75 F.3d 86, 89 (2d Cir. 1996).

Despite the proscriptions against a court's exercise of the power to recall a mandate, Cean nevertheless seeks that relief based on what she claims are errors in the manner in which the district court calculated loss for Guidelines purposes, and argues that she is entitled to the relief sought under each of the four factors considered by the Court in Sargent. (Mtn. at 4-5). Cean's

reliance on the factors test in Sargent is misplaced, however, as it applies only when the motion to recall a mandate is premised on "a supervening change in governing law that calls into serious question the correctness of the court's judgment." Sargent, 75 F.3d at 90 (internal quotation marks, alterations and citations omitted). Such is not the case here. Indeed, the grounds on which Cean seeks to recall the mandate were not even raised by Cean on appeal,⁷ and therefore no serious question about the correctness of the Court's judgment can be said to exist based on any supervening change in the law or otherwise. See, e.g., Sargent, 75 F.3d at 91 (rejecting argument that recalling mandate was warranted based on a change in governing state law in part because the issue arguably impacted by new legal precedent was not raised on appeal).

What Cean's motion to recall the mandate seeks to do, in actuality, is to challenge the validity of her sentence, which is not a permissible use of the motion. The appropriate vehicle by which to raise such a challenge now is a habeas corpus motion under 28 U.S.C. § 2255. See Jiminian v. Nash, 245 F.3d 144, 146-47 (2d Cir. 2001) ("§ 2255 is generally the proper vehicle for a federal

⁷ While Cean did challenge her sentence as procedurally and substantively unreasonable on appeal, she did not specifically argue that the district court erred in its calculation of loss, or that its failure to hold a Fatico hearing on the issue of loss was in error.

prisoner's challenge to his conviction and sentence[.]"). Moreover, Cean has implicitly acknowledged as much contending, as she does, that a recall of the mandate would allow her to challenge her sentence before this Court more quickly than would a § 2255 motion. (See, e.g., Dec. at 4, 13-14).⁸

II. Cean's Specific Claim Has No Merit

In any event, Cean's claim has no merit.

A. Loss and Restitution May Be Different

Cean's principal argument in support of her motion to recall the mandate, namely, that disparity between loss amounts adopted at sentencing and restitution ordered on remand elucidates procedural errors in sentencing (Mtn. at 2),⁹ is unavailing because loss and restitution amounts may permissibly differ.

Pursuant to U.S.S.G. § 2B1.1(b)(1), the offense level for a fraud conviction is based on the amount of loss attributable

⁸ In her Declaration, Cean argues that she was precluded from filing a § 2255 petition because the district court had not yet rendered a final determination of the matter on remand (see Dec. at 14); that argument is now moot.

⁹ The R&R had not yet been issued when Cean filed the instant motion, and her arguments, therefore, were anticipatory in nature, e.g., "[s]hould Judge's Reyes' restitution determination differ substantially from the determination by Judge Johnson at sentence, which we believe it will . . . [s]uch a discrepancy would elucidate the errors made by Judge Johnson." (Mtn. at 2). Because the discrepancy that Cean anticipated is now borne out, the government responds to Cean's arguments as if they were affirmatively made.

to the scheme. The Application Notes to § 2B1.1 direct that "loss" be assessed as the "greater of actual loss or intended loss" (App. Note 3(A)), and define "actual loss" as "the reasonably foreseeable pecuniary harm that resulted from the offense" (App. Note 3(A)(i)) and "intended loss" as "the pecuniary harm that the defendant purposely sought to inflict" (App. Note 3(A)(ii)). In determining the applicable loss amount, "the [c]ourt need only make a reasonable estimate of the loss." (App. Note 3(C)). By contrast, in ordering restitution, a sentencing court is constrained by the actual loss amount incurred by the victim. See 18 U.S.C. 3663A; see also United States v. Lacey, 699 F.3d 710, 721 (2d Cir. 2012) (noting that "restitution is designed to make the victim whole, see [United States v. Innarelli, 524 F.3d 286, 293-94 (1st Cir. 2008)]", and must therefore be based only on the actual loss caused by the scheme" (citations omitted)). Given the varied scope of loss and restitution determinations, then, a disparity between them does not, in and of itself, constitute proof of a sentencing error. See United States v. Germosen, 139 F.3d 120, 130 (2d Cir. 1998) ("Of course, an amount-of-loss calculation for purposes of sentencing does not always equal such a calculation for restitution").

B. Cean Never Challenged the District Court's Failure to Conduct a Fatico Hearing

While Cean also argues, more generally, that "the district court's denial of a Fatico hearing and adoption of the Government's intended loss amount based on recent tax assessment values with no further inquiry" was erroneous (Mtn. at 4), Cean never challenged this specific purported failure on direct appeal. Nonetheless, the district court's failure to hold a Fatico hearing to address the fair market value of the properties at issue does not constitute procedural error.

Indeed, the government addressed the appropriateness of the use of recent tax assessments as a proxy for fair market value in its sentencing submission:

[T]he Guidelines clearly state that in cases such as the one at bar - a fraud involving a mortgage loan where the property has not been disposed of by the time of sentencing - "there is a rebuttable presumption that the most recent tax assessment value of the collateral is a reasonable estimate of the fair market value." [U.S.S.G. § 2B1.1(b)(1) App. Note 3(E)(iii).]¹⁰

(EDNY Dkt. No. 198; MGA 4). Cean, in turn, persisted in her objection to the court's reliance on the tax assessments as the marker for property value, arguing:

¹⁰ Cean fairly points out that the government mistakenly cited Application Note 3(C) instead of 3(E) as the source of the quoted language in its sentencing submission. (Mtn. at 3).

Now, as the Court knows from its own experience, both as a citizen and as a jurist, a tax assessment may not be up to date, it may not be accurate, it may be much lower than the actual fair market value of the property is and by using a tax assessment, my client is prejudiced.

(CA 84). Cean also noted that none of the victims identified in the PSR had responded to requests for affidavits of loss. (Id.).

The district court, presumably finding that Cean's argument did not sufficiently rebut the presumption in favor of tax assessment value, did not order a Fatico hearing to address Cean's specific objection to the use of the tax assessments. Instead, tracking the actual loss estimate of \$1,205,355 set forth in the PSR, the district court sua sponte found that Cean intended a loss of more than one million dollars:

There's a dispute over whether the amount of money involved was 500 some thousand dollars or over a million dollars. 2B1.1 addresses that issue. 2B1.1 says that in instances such as this, the amount to be determined will be the actual amount or the intended amount, whichever is greater. I find specifically that the government has proven that the intended amount is over one million dollars, so I think 16 points is proper in this case.

(CA 100).¹¹ While Cean is critical of the district court's failure to "conduct any analysis of whether the most recent tax assessment

¹¹ Cean mischaracterizes the government's position at sentencing with respect to loss by stating, "[i]n the Government's sentencing submission, it calculated the intended loss amount for guideline purposes using the Probation Department's provision of recent tax assessment values for the properties at issue." (Mtn.

value was indeed a reasonable estimate of the fair market value of the properties" (Mtn. at 3), a sentencing court is not "required, by either the Due Process Clause or the federal Sentencing Guidelines, to hold a full-blown evidentiary hearing in resolving sentencing disputes." United States v. Slevin, 106 F.3d 1086, 1091 (2d Cir. 1996). Rather, "the District Court has broad discretion to determine the procedure by which it will resolve disputed issues at sentencing, so long as it affords the defendant some opportunity to rebut the Government's allegations." United States v. Eisen, 974 F.2d 246, 269 (2d Cir. 1992) (citing United States v. Prescott, 920 F.2d 139, 143-44 (2d Cir. 1990)).

Moreover, even in an instance in which this Court has remanded a case to provide a defendant with an opportunity "to persuade the sentencing judge that the loss he intended was less than the face amount of the loans," United States v. Confredo, 528 F.3d 143, 152 (2d Cir. 2008), the Court later upheld the district court's finding that the defendant had "failed to carry his burden to show an intended loss . . . less than the face value of the loan applications," United States v. Confredo, 458 F. App'x 69, 72 (2d Cir. 2012). Similarly, here, the district court's

at 3 (emphasis added)). While the government did ask the district court to adopt the loss calculations set forth in the PSR, it did not argue that it was the amount of loss intended, but rather a fair estimation of the actual losses incurred by the named lenders given the information available at the time.

determination that Cean intended a loss of over a million dollars was a reasonable estimate of the loss based on the information set forth in the PSR, a determination that is entitled to great deference. See U.S.S.G. § 2B1.1 Application Note 3(C) ("[t]he sentencing judge is in a unique position to assess the evidence and estimate the loss based upon that evidence."). Indeed, while in Confredo, the sentencing court characterized the intended loss amount as the full amount of the fraudulently acquired (unsecured) loans, here the intended loss amount was reduced by the tax-assessed value of the relevant properties (CPSR ¶¶ 22-23), a benefit not necessarily required under the circumstances: "a sentencing court need not apply the fair market value as an offset in calculations of intended loss; it need only offset the loss amount by however much it finds the defendant did not intend loss." Lacey, 699 F.3d at 720.

Finally, the fact that the district court more recently found that certain entities identified as victims in the PSR were not victims for purposes of restitution (and reduced the restitution order accordingly) does not demonstrate that Cean's sentence was illegal, as she contends. (Dec. at 2-3). See, e.g., United States v. Rutigliano, et al., 694 F. App'x 19, 25 (2d Cir. 2017) (summary order) (upholding district court's denial of § 2255 petition for resentencing based on finding that victim's post-

trial reinstatement of voided pensions did not impact the intended-loss figures, and noting that same would be true even if actual loss to victim were impacted).

Accordingly, because the recalling of a mandate is an extraordinary remedy that Cean has failed to demonstrate entitlement to, Cean's motion to recall the mandate should be denied.

CONCLUSION

For the reasons stated above, Cean's motion to recall the mandate should be denied.

Dated: Brooklyn, New York
March 16, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. 1. This response complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because the response contains 4,206 words, excluding the parts of the response exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This response complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a monospaced typeface using Microsoft Word in 12-point Courier New font.

Dated: Brooklyn, New York
March 16, 2018

/s/
JO ANN M. NAVICKAS
Assistant U.S. Attorney

"Exhibit F"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,) Criminal
Government,) No. 11-449 (SJ)
vs.) STATUS CONFERENCE
(2) CASSANDRA CEAN,) Brooklyn, New York
Defendant.) Date: April 26, 2017
Time: 11:00 a.m.

TRANSCRIPT OF STATUS CONFERENCE
HELD BEFORE
THE HONORABLE JUDGE STERLING JOHNSON, JR.
UNITED STATES DISTRICT JUDGE

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(Appearances continued on next page...)

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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9 Cassandra Cean, via telephonic communications
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1 (WHEREUPON, commencing at 11:32 a.m., the following
2 proceedings were had in open court, to wit:)

3 THE COURTROOM DEPUTY: *US v. Cassandra Cean.*

4 THE COURT: Note your appearances.

5 MS. CRUZ MELENDEZ: Good morning, Your Honor. Maria
6 Cruz Melendez for the United States.

7 MR. IRIZARRY: Good morning. Edward Irizarry for
8 the defendant Cean. Good morning, Your Honor.

9 MS. MILLER: Interested party PennyMac. I am here
10 because I spoke with the AUSA and understood that maybe this
11 proceeding might have something to do with my client so I
12 appeared.

13 MS. CRUZ MELENDEZ: We weren't sure what the
14 proceeding would cover and so attorneys for PennyMac asked
15 whether or not it made sense for them to sit in because the
16 prosecution was not sure as to what we would be covering. I
17 said it probably wouldn't hurt and Your Honor would probably
18 not have a problem with it.

19 THE COURT: Now, the case has been resolved; is that
20 correct?

21 MS. CRUZ MELENDEZ: With regard to restitution -- so
22 the defendant, specifically Cassandra Cean, she's been
23 sentenced. The issue of restitution was sent back on behalf
24 of the government to the district court for a hearing. Judge
25 Reyes held a hearing and provided a recommendation for

1 Your Honor with regard to restitution. The government's
2 understanding, and I believe defense counsel's understanding
3 as well, is that Your Honor is reviewing that report and
4 recommendation to issue an order with regard to restitution.

5 THE COURT: Okay.

6 MS. CRUZ MELENDEZ: It's also my understanding that
7 Your Honor wished to speak to Ms. Cean, particularly
8 because --

9 THE COURT: I don't wish to speak to her, she wishes
10 to speak to me.

11 MS. CRUZ MELENDEZ: Okay.

12 THE COURTRROOM DEPUTY: Ms. Cean, are you on the
13 phone?

14 THE DEFENDANT: Yes, I am.

15 THE COURT: Go ahead.

16 THE DEFENDANT: I can't hear what's going on in the
17 background, though. It sounds muffled.

18 THE COURT: Will the parties speak into the mikes.

19 MR. IRIZARRY: Just note my appearance, Edward
20 Irizarry, for the record.

21 THE COURT: Go ahead.

22 MS. CRUZ MELENDEZ: So as I was saying, Ms. Cean, I
23 am not sure if you heard the beginning of what I was saying.
24 To summarize, in the event that you did not hear me, the
25 government's understanding is that Ms. Cean requested or sent

1 communications to Your Honor, and so Your Honor requested the
2 appearance today in order to resolve certain issues with
3 regard to certain communications. The government has not seen
4 the communications so I am unsure as to what specifically
5 Ms. Cean is requesting. But with regard to restitution, and
6 the presence of counsel for PennyMac, it may be unnecessary
7 that they're here, but they were told that in the event that
8 some discussion of restitution happened, and as the victim, if
9 they preferred to be present, that it would be fine if they
10 were present.

11 THE COURT: Mr. Irizarry, who do you represent?

12 MR. IRIZARRY: Ms. Cean.

13 THE COURT: Ms. Cean, what is it that you wanted?
14 Hello?

15 THE DEFENDANT: Yes. Hello?

16 THE COURT: What is it you wanted?

17 THE DEFENDANT: I just wanted clarification,
18 Your Honor.

19 THE COURT: What do you mean, clarification?

20 THE DEFENDANT: As to the status. Because I was
21 told that there was a status conference, and if there was a
22 status conference, I wanted to make sure that the Court did
23 not require my appearance.

24 THE COURT: No, we didn't.

25 THE DEFENDANT: Okay.

1 THE COURT: Thanks for your concern.

2 MS. CRUZ MELENDEZ: Just so that Ms. Cean is aware,
3 I think because Ms. Ramlochan's case was subsequent to your
4 own case and Mr. Browne's case, Ms. Ramlochan was eventually
5 added on to the restitution issue after the hearing occurred.
6 And so the status conference -- the two recent status
7 conferences that occurred were relevant to Ms. Ramlochan case,
8 and that was the reason that counsel for you with regard to
9 the restitution did not appear.

10 THE DEFENDANT: My apologies, but I really can't
11 hear what was just said.

12 MS. CRUZ MELENDEZ: This is Maria Cruz Melendez, for
13 the government.

14 THE DEFENDANT: How are you?

15 MS. CRUZ MELENDEZ: Can you hear me now?

16 THE DEFENDANT: Yes, I can. Thank you.

17 MS. CRUZ MELENDEZ: Okay. So what I was explaining
18 to the Court and to you, is that with regard to the last two
19 status conferences, if you might recall, your codefendant,
20 Ms. Ramlochan, her appeal happened subsequent to your own
21 appeal, and so the --

22 THE DEFENDANT: Correct.

23 MS. CRUZ MELENDEZ: -- restitution issue with regard
24 to her was technically separate and then it was added on to
25 your case.

1 With regard to the last two status conferences that
2 occurred, they were specific to her, because it had to do with
3 sort of her separate standing with regard to the restitution,
4 and that's why your counsel and your appearance was not
5 necessary, because it was technically dealing with and
6 relevant to Ms. Ramlochan.

7 As you know, the restitution report and
8 recommendation involves all defendants. The Court is
9 considering the report and recommendation, and once an order
10 is issued and a restitution is imposed, or not imposed, if
11 restitution ends up being zero, then it is the government's
12 intention to writ you over to the Eastern District so that you
13 can appear for this. And so once we hear from Your Honor that
14 a report -- a recommendation has either been adopted or
15 amended or some other order has been put into place, it is
16 definitely our intention to make sure that you are here and
17 present for any imposition of restitution.

18 THE DEFENDANT: Okay. Thank you. Thank you for the
19 clarification.

20 Just two things. So is it -- currently, there is no
21 oral argument to be made?

22 THE COURT: No.

23 THE DEFENDANT: Okay. So we're just waiting.

24 And then lastly, Your Honor, if possible, I am at a
25 camp, and they do allow legal furloughs. So if the Court can

1 consider a legal furlough, I would appreciate it, when that
2 time comes for re-sentencing.

3 THE COURT: That is something you have to take up
4 with the Bureau of Prisons, okay? Thank you very much.

5 THE DEFENDANT: I'm sorry, Your Honor, what did you
6 say?

7 THE COURT: That's something you must take up with
8 the Bureau of Prisons.

9 THE DEFENDANT: Okay. Will do.

10 THE COURT: All right.

11 MR. IKIZARRY: Thank you very much, Your Honor.

12 MS. CRUZ MILENDEZ: Thank you.

13 THE COURTROOM DEPUTY: We are hanging up?

14 THE COURT: Okay.

15 (WHEREUPON, at 11:30 a.m., the proceedings were
16 concluded.)

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REPORTER'S CERTIFICATE

21 I, ANNETTE M. MONTALVO, do hereby certify that the
22 above and foregoing constitutes a true and accurate transcript
23 of my stenographic notes and is a full, true and complete
24 transcript of the proceedings to the best of my ability.

25 Dated this 19th day of May, 2017.

26 /s/Annette M. Montalvo
Annette M. Montalvo, CSR, RDR, CRR
Official Court Reporter